Petition

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No. 81-3

IN THE

Supreme Court of the United States

October Term, 1980

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

A non-tax-funded pervasively religious institution which had been recognized as tax-exempt under § 501 (c)(3) of the Internal Revenue Code holds a primary religious conviction that interracial dating and marriage are contrary to Scripture. On the grounds that § 501 (c)(3) allows tax-exempt status solely to organizations which are "charitable" in the common law sense, and that the institution's policy implementing that religious belief violates "public policy", the IRS revoked its recognition of the institution's tax-exempt status.

1. Did the Congress, in § 501(c)(3), require that an organization, regardless of whether it is organized and operated exclusively for religious purposes, nonetheless be "charitable" in the common law sense?

2. Did revocation of recognition of the institution's tax-exempt status violate rights of the institution protected by the Free Exercise Clause of the First Amendment?

3. Did the requirement of IRS, that, to be tax-exempt, a religious organization must stay in step with "expressed federal policy", as defined by IRS, violate the Establishment Clause of the First Amendment?

4. Did denial by IRS of tax-exempt status to the institution deprive it of liberty and property without due process of law contrary to the Fifth Amendment?

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.[1]

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit entered in this proceeding on December 30, 1980 (as corrected January 19, 1981).

1. The caption of the Court of Appeals opinion lists three cases, No. 79-1215 (*Bob Jones University v. United States of America*), No. 79-1216 (*Bob Jones University v. United States of America*), and No. 79-1293 (*Bob Jones University v. W. Michael Blumenthal, Secretary of the Treasury and Jerome Kurtz, Commissioner of Internal Revenue*). The first was the Government's appeal from the District Court's order of December 26, 1978; the second, its appeal from the District Court's order of February 28, 1979, protecting a document sought as evidence; the third, from the District Court's order of May 14, 1979, requiring, pursuant to its order of December 26, 1978, restoration of Bob Jones University as an organization exempt from taxation. The petitioner here has combined these cases in a single caption.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, which appears as Appendix A hereto, is reported at 639 F. 2d 147 (1980). The dissenting opinion in that court appears as Appendix B. The opinion of the United States District Court for the District of South Carolina, Greenville Division, appealed from in No. 79-1215 in the Court of Appeals, and which appears as Appendix C hereto, is reported at 468 F. Supp. 890 (1978). The Opinion of the United States District Court for the District of South Carolina, Greenville Division, appealed from in No. 79-1293 in the Court of Appeals, and which appears as Appendix D hereto, is unreported.

JURISDICTION

This case was decided and judgment was entered by the United States Court of Appeals for the Fourth Circuit on December 30, 1980. A petition for rehearing was denied April 8, 1981. The jurisdiction of this Court is invoked under Title 28 of the United States Code § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

U. S. Constitution, Amendment V:

> ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . ."

Internal Revenue Code:

"*Sec. 501. Exemption from tax on corporations, certain trusts, etc.*

"(a) *Exemption from taxation.*—An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle. . . .

• • •

"(c) *List of exempt organizations.*—The following organizations are referred to in subsection (a):

• • •

"(3) Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals . . ."

"*Sec. 3306. Definitions.*

"(c) *Employment.*—For purposes of this chapter, the term 'employment' means . . . (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, . . . except—

• • •

"(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);"

STATEMENT OF THE CASE

Petitioner, Bob Jones University,[2] brought this action against the United States, pursuant to 28 U. S. C. § 1346, to recover $21.00 which it had paid in taxes under the Federal Unemployment Tax Act. The Government counterclaimed for approximately $490,000.00 in unemployment taxes, plus interest, allegedly due it on returns filed by the University for the years 1971 through 1975.

At issue was the revocation by the Internal Revenue Service of its recognition of the status of the University as an exempt organization under § 501(c)(3) of the Internal Revenue Code. The revocation resulted from the University's enforcement of its religious teachings concerning interracial marriage.[3] IRS contended that § 501 (c)(3) exempts only organizations which are "charitable" in nature (and that whether the University was religious in purpose and character was irrelevant); that an organization which violates federal policy may not be considered to be charitable in nature; that the University's policy on interracial marriage violated federal public policy. The District Court, both on statutory and First Amendment grounds, held that the Government was without authority to revoke its recognition of the tax-exempt status of the University. The Court of Appeals reversed, holding that the Internal Revenue Service had statutory authority for

2. In accord with Rule 28.1, Bob Jones University states that it is a corporation which has no parent company or subsidiary (except wholly owned subsidiaries).

3. Prior to September, 1971, that enforcement took the form of barring admission of black students. (I Appendix in Court of Appeals, Nos. 79-1215 and 79-1216, 91). After that date married black students were admitted, and, since May, 1975, a completely open admissions policy has been in effect. Restrictions on interracial dating and marriage among students continue to exist.

its action and that that action did not violate First Amendment rights of the University. Judge Widener, of the Court of Appeals, dissented.[4]

The trial court, noting that the University accepts no financial support from local, state or federal government (468 F. Supp. at 894), made findings of fact with respect to (a) the University's religious character and (b) its related religious beliefs on dating and marriage.

The trial court found the University's religious character to be pervasive and central to its existence:

> "The plaintiff [University] is dedicated to the teaching and propagation of its fundamentalist religious beliefs. Everything taught at plaintiff is taught according to the Bible .... The cornerstone of plaintiff institution is Christian religious indoctrination, not isolated academics."
> *Id.* at 894.

Nearly half of the University's 5,000 students are studying for the ministry or otherwise preparing for Christian service. *Ibid.* Prayer is an enjoined and constant practice among the student body. *Ibid.* Every teacher is required to be a "born again" Christian who must testify to a saving experience with Jesus Christ. Every teacher must consider his or her mission at the University to be the training of

4. Back of this litigation lies the litigation considered by this Court in *Bob Jones University v. Simon*, 416 U. S. 725 (1974), wherein the Court had held that the Anti-Injunction Act (26 U. S. C. § 7421(a)) prohibited the University from obtaining judicial review, through an injunction action, of revocation by IRS of the University's tax-exempt status. There the Court had suggested that a proper procedure for the University to gain judicial review would be to pay ". . . an installment of FICA and FUTA taxes, exhaust the Service's internal refund procedures, and then bring suit for the refund." *Id.* at 746.

Christian character. *Ibid.* Students are screened as to their religious beliefs, and a multitude of religious disciplinary rules address "almost every facet of a student's life." *Ibid.* Worldly amusements, such as dancing, use of tobacco, movie-going, and listening to jazz or rock music are prohibited. *Ibid.*

The Court of Appeals did not dispute these findings.

With respect to the second area of findings, the University's policy regarding dating and marriage, the trial court found:

> "A primary fundamentalist conviction of the plaintiff is that the Scriptures forbid interracial dating and marriage. Detailed testimony was presented at trial elucidating the Biblical foundation for these beliefs. The Court finds that the defendant [the Government] has admitted that plaintiff's [the University's] beliefs against interracial dating and marriage are genuine religious beliefs." *Ibid.*

The Court of Appeals did not dispute this finding, but rather affirmed it:

> "Bob Jones University believes that the Scriptures forbid interracial marriage and dating." 639 F. 2d at 149.

The decision of the Court of Appeals was based upon four conclusions of law:

1. That the district court's reading of the separate references, in Section 501(c)(3), to eight different types of organizations which are entitled to tax-exempt treatment ("religious", "charitable", "scientific", etc.) was "simplistic", in that the three-judge court in *Green v. Connally*, 330 F. Supp. 1150 (D. D. C. 1971), *aff'd. per curiam sub nom. Coit v. Green*, 404 U. S. 997 (1971),

had reasoned that the listed eight types of organizations were *all* required to meet the common law definition of "charitable". 639 F. 2d at 151. Thus it was of no significance that the University had been found, as a matter of fact, to be "religious".

2. That the University could not qualify as a "charitable" organization if it violated "public policy". The University violated public policy by its enforcement of its beliefs relating to marriage "specifically, the government policy against subsidizing racial discrimination in education, public or private." *Ibid.* This policy the court found to be "formalized" in several IRS rulings (Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Proc. 75-50, 1975-2 Cum. Bull. 587; Rev. Rul. 75-231, 1975-1 Cum. Bull. 158). *Id.* at 150.

3. That, assuming that the revocation of the University's tax-exempt status did to an extent impinge upon the University's freedom to practice religion, "[t]he government's interest in eliminating all forms of racial discrimination is compelling." *Id.* at 153. Thus its action did not violate the Free Exercise Clause.

4. That, due to the compelling state interest in enforcement of nondiscrimination, the government's action did not create Establishment Clause violation by advancing those religions which would "stay in step" with the "expressed federal policy" of nondiscrimination. Further, since the only inquiry which government would make of the University would be "whether the institution maintains racially neutral policies", no excessive entanglements would be created. *Id.* at 154-155.

The dissenting opinion, pointing to the district court's findings respecting the religious nature of the University, as well as to language of this Court in *Bob Jones University*

v. Simon, 416 U. S. 725, 734 (1974),[5] concluded that "Bob Jones University is a religious organization" and stated:

> "We are dealing in this case not with the right of the government to interfere in the internal affairs of a school operated by a church, but with the internal affairs of the church itself. There is no difference in this case between the government's right to take away Bob Jones' tax exemption and the government's right to take away the exemption of a church which has a rule of its internal doctrine or discipline based on race, although this church may not operate a school at all." 639 F. 2d at 158.

The dissent stated that the majority, the IRS, and the district court in *Green v. Connally*, had misconstrued Section 501(c)(3) by insisting that all the eight types of organizations listed therein be common law "charitable" organizations. *Id.* at 156, 157, 158. Instead Congress, by employing the common technique of legislating in the disjunctive,[6] provided that each of the eight classes be tax-exempt. Since the University falls within one of these classes ("religious"), it is exempt, and IRS cannot take away the exemption granted by Congress. The dissent denied that tax exemption to an institution constitutes "subsidizing" it (*ibid.*), and concluded that the public policy of the nation favoring freedom of religion may not be made subordinate to a public policy against discrimination on account of race in private, non-tax-funded religious institutions. *Id.* at 158-164.

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5. "The university is devoted to the teaching and propagation of its fundamentalist religious beliefs."

6. "Each of these [the eight types of organizations] is a distinct and separate category. By the rules of statutory construction as well as common sense, the word 'or' must be read after each of the listed categories." *Id.* at 157.

REASONS FOR GRANTING THE WRIT

I. The Case Presents Important Questions of Federal Law Not Yet Settled by This Court

As the dissenting opinion correctly states, "This is a case of first impression so far as the Supreme Court is concerned . . ." 639 F. 2d at 158. The questions of federal law involved in this case are of national importance:

1. The Court of Appeals has misconstrued that act of Congress (Section 501(c)(3)) on which depends the tax exemption of every organization organized exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster international amateur sports competition, or for the prevention of cruelty to children or animals. All, according to that court, must meet the common law definition of "charitable" (*id.* at 151), despite the fact that the term, "charitable", appears as a separate category of exempt organization in Section 501(c)(3). This is plain error, in that the words of the statute, interpreted in their ordinary, everyday sense (*Malat v. Riddell*, 383 U. S. 569, 571 (1966)), show that the Congress did not impose such a limitation or confer upon the Secretary of the Treasury any power to devise such a limitation.[7] The relevant statutory history supports no such construction,[8] but indeed militates against it.[9]

7. Where substantial constitutional issues under the Religion Clauses of the First Amendment arise by virtue of the extension, to religious institutions, of a federal statutory requirement, this Court has held that the extension must not be left to implication, but instead must be "clearly and affirmatively expressed" by the Congress. *NLRB v. Catholic Bishop of Chicago*, 440 U. S. 490, 501 (1979).

8. The Court of Appeals at page 151 states: "The legislative history of § 501(c)(3) verifies the exemption's foundation in public policy". The court then cites as its authority "H. R. Rep. No. 1820,

2. All religious institutions in the United States are potentially threatened by a rule of law such as the Fourth Circuit has pronounced which would cause the protective barrier of their tax exemption to be breached because of their failure to conform to "public policy". This adverse effect is here accentuated by the fact that the "public policy" in question is without legislative definition; what it means and whether there is conformity to that meaning is left to the unlimited discretion of the Internal Revenue Service. 639 F. 2d at 149-150. While this rule of law as applied by the Fourth Circuit in the premises violates petitioner's religious liberty, and rights to due process of law, it also, by its "lacking in 'terms susceptible of objective measurement'," becomes "a highly efficient in terrorem mechanism" for inducing conformity of churches and other religious bodies to the will of governmental administrators.

8. (Cont'd.)

75th Cong. 3d Sess. 19 (1939)", from which it quotes at length. The reference is utterly erroneous. The actual House Report in which the quotation is found is No. 1860, not 1820. The year of the Report was 1938 not 1939. The Report did not deal at all with charitable *exemptions* but with charitable *deductions*, the quoted language relating to Section 23(q) of the Revenue Act of 1938 (which was incorporated into Section 170 of the Internal Revenue Code) and not to Section 501(c)(3) (or Section 101 of the 1938 Revenue Act) which dealt with charitable exemption.

9. As IRS itself flatly stated in I. T. 1800, II-2 C. B. 151 (1923): "It seems obvious that the intent must have been to use the word 'charitable' in Section 236(b) [the precursor of Section 501(c)(3)] in its more restricted and common meaning and not to include either religious, scientific, literary, educational, civic or social welfare organizations. Otherwise, the word "charitable" would have been used by itself as an all-inclusive term, for in its broadest sense it includes all of the specific purposes enumerated. That the word "charitable" was used in a restricted sense is also shown from its position in the section. The language is "religious, charitable, scientific, literary, or educational. . . ."

Keyishian v. Board of Regents of New York, 385 U. S. 589, 604, 601 (1967).

3. The Court of Appeals broadly holds, as a matter of law, that there is a compelling governmental interest in "eliminating all forms of racial discrimination in education" even though that would collide with the exercise of religious liberty. 639 F. 2d at 153. The Supreme Court has never so held. The question is one of obvious importance. On the basis of this ill-defined public policy, IRS has, for example, sought to impose on religious schools a widely noted Revenue Procedure whereby tax exemption would be denied to such schools solely on the basis of racial criteria and without regard to religious criteria. PROPOSED REVENUE PROCEDURE ON PRIVATE TAX-EXEMPT SCHOOLS, 43 Fed. Reg. 37296 (1978). Thereunder a religious school (*e.g.*, Old Order Amish or Orthodox Jewish) would be presumed racially discriminatory (and hence not tax-exempt) even though it could not, for the clearest *religious* reasons, engage in recruiting or staffing solely on the basis of race and without regard to the most binding obligations of faith.

II. The Decision Below Is in Conflict With Applicable Principles Established by This Court

While, as a case of first impression, the decision below does not represent a direct conflict with a particular decision of the Supreme Court, it states principles which ignore, or are opposed to, basic principles which this Court has established in its previous decisions:

1. The Court of Appeals treats *Green v. Connally*, *supra*, as the fundamental justification for the power of IRS to deny recognition of tax-exempt status to a religious organization which is deemed to violate "public policy".[10]

10. While the Supreme Court summarily affirmed the district court's decision *sub nom. Coit v. Green*, *supra*, it later explained

Green,[11] as interpreted by the Court of Appeals and by IRS, makes the religious nature of an organization irrelevant where its tax exemption is challenged, since the sole question is whether it is "charitable" (and accordingly in step with "public policy"). Under that view, it is also therefore irrelevant that the denial of tax exemption would cripple a religious ministry, render the existence of a religious institution impossible, or give rise to Establishment Clause problems. Yet this Court has held religious liberty to be a "preferred" freedom, *Murdock v. Pennsylvania*, 319 U. S. 105, 115 (1943), and free religious exercise a "transcendent value". *Norwood v. Harrison*, 413 U. S. 455, 469 (1973). The Court of Appeals' reading of Section 501(c)(3), by ignoring the special constitutional character of a religious organization and classifying it as a common law "charitable" organization, would render irrelevant the Supreme Court's decisions laying down controlling principles under the Free Exercise Clause. Substituted would be merely the single determination: Has the organization violated "public policy"?

Further, this Court has held that legislation which gives preference to one religion over another, *School District of Abington Township v. Schempp*, 374 U. S. 203, 216 (1963), or which has the effect of vitiating government neutrality in matters of religious theory, doctrine or practice, *Epperson v. Arkansas*, 393 U. S. 97, 103-104 (1968), or which excessively entangles religion and government,

10. (Cont'd.)

in *Bob Jones University v. Simon*, 416 U. S. 725, 740, n. 11 (1974), that that affirmance lacked precedential weight because no adversarial controversy remained in *Green* by the time the case reached this Court.

11. No religious entities were parties in *Green*, and no issues under the Religion Clauses of the First Amendment were raised or litigated in that case.

Lemon v. Kurtzman, 403 U. S. 602 (1971), violates the Establishment Clause. If government is allowed to prescribe a minimum floor of acceptable church doctrine—that is, the absence of certain disfavored religious beliefs—by use of the mechanism of taxation of those churches which hold and practice contrary beliefs, then the command of the Establishment Clause that no doctrine be preferred by government, and that government not be "hostile to any religion", *Epperson, supra*, at 104, has been set aside, without the approval of this Court. Too, there was no adequate examination by the Court of Appeals of the special problem of the entanglements between government and religion which the IRS requirement that a church "maintain" a nondiscrimination policy necessarily entails. The IRS does not intend that a church merely *state* such a policy, it intends that a church *practice* such a policy. It is the government surveillance of the practice of nondiscrimination which "entangles the state in details of administration", *Lemon, supra*, at 615, and involves government and religion in "administrative relationships for enforcement of statutory or administrative standards", *id.* at 621, thereby breaching the Establishment Clause prohibition against excessive church-state entanglement.

2. The Court of Appeals not only ignores principles enunciated by the Supreme Court; it contradicts them. This Court has found a compelling governmental interest justifying denial of religious liberty in only a handful of cases (*e.g., Reynolds v. United States*, 98 U. S. 145 (1879), *Jacobson v. Massachusetts*, 197 U. S. 11 (1905), *Prince v. Commonwealth of Massachusetts*, 321 U. S. 158 (1944)). The broad proposition now given by the Fourth Circuit, that anything labelable as "racial discrimination" automatically overrides the right and duty to live by clearly established religious principle, has been, until the decision below, unheard of and would render meaningless the test

for Free Exercise violation so clearly stated in *Sherbert v. Verner*, 374 U. S. 398, 406 (1963), and *Wisconsin v. Yoder*, 406 U. S. 205, 215 (1972). Under that proposition, an institution which would not exist except for its religious mission, and which is a pervasively religious organization (*e.g.*, a school which is Orthodox Jewish, Mennonite, Roman Catholic, Seventh-day Adventist or fundamentalist Christian) could virtually be denied existence on account of refusal, necessitated by a commitment to the primacy of religious considerations, to admit students on the basis solely of racial criteria.

The Court of Appeals has also contradicted principles enunciated by the Supreme Court in the latter's Establishment Clause decisions. The thesis of the Court of Appeals is that, in the matter of race, religions *are* required to "stay in step with expressed federal policy", even though ordinarily "[t]he Establishment Clause protects against such intrusion." 639 F.2d at 154. This is said to be because "the Establishment Clause does not prevent government from enforcing its most fundamental and societal values by means of a uniform policy, neutrally applied." In other words, national policy, as given in the Establishment Clause, must always yield to whatever is administratively determined to be "federal policy". That is so, even though the result is to accord tax exemption only to those religions which are willing to conform to the will of government agents who define "federal policy", but to deny tax-exempt status to the religious organization which is doctrinally disabled to conform. This plainly contradicts principles explicated by the Supreme Court condemning "compulsory unification of opinion",[12] upholding the right to maintain religious beliefs despised by others,[13] and

12. *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 641 (1943).

13. *United States v. Ballard*, 322 U. S. 78, 87 (1944).

invalidating governmental action which pressures religious bodies to conform their organization or polity to governmental prescriptions.[14]

CONCLUSION

For all of the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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14. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U. S. 696-709 (1976).

Appendix

APPENDIX A

Opinion of the United States Court of Appeals for the Fourth Circuit

United States Court of Appeals,
Fourth Circuit.

Nos. 79-1215, 79-1216 and 79-1293.

BOB JONES UNIVERSITY,
Appellee,

v.

UNITED STATES of America,
Appellant.

BOB JONES UNIVERSITY,
Appellee,

v.

UNITED STATES of America,
Appellant.

BOB JONES UNIVERSITY,
Appellee,

v.

W. Michael BLUMENTHAL, Secretary of the Treasury and Jerome Kurtz, Commissioner of Internal Revenue,
Appellants.

Argued March 3, 1980.
Decided Dec. 30, 1980.
As Corrected Jan. 19, 1981.

Leonard J. Henzke, Jr., Tax Div., Dept. of Justice, Washington, D. C. (M. Carr Ferguson, Asst. Atty. Gen., Washington, D. C., Thomas E. Lydon, U. S. Atty., Colum-

bia, S. C., Gilbert E. Andrews, Tax Div., Dept. of Justice, Washington, D. C., on brief) for appellant.

Wesley M. Walker, Greenville, S. C. (J. D. Todd, Jr., O. Jack Taylor, Jr., Natalma M. McKnew, Leatherwood, Walker, Todd & Mann, Greenville, S. C., John C. Stophel, Stophel, Caldwell & Heggie, Chattanooga, Tenn., on brief) for appellee.

Before WIDENER and HALL, *Circuit Judges;* and MERHIGE*, *District Judge.*

K. K. HALL, *Circuit Judge:*

Bob Jones University conducts "an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures. . . ."[1] Its religious teachings include a strict prohibition against interracial dating and marriage. The admissions and disciplinary policies used

* Honorable Robert R. Merhige, Jr., United States District Judge for the Eastern District of Virginia, sitting by designation.

1. As stated in its Preamble, and contained in its Certificate of Incorporation:

> The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures, combating all atheistic, agnostic, pagan and so-called scientific adulterations of the Gospel, unqualifiedly affirming and teaching the inspiration of the Bible (both Old and New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the Cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the Grace of God.

to enforce this belief have resulted in the loss of the University's tax exempt status, which we are now asked to review.

Bob Jones University [taxpayer] brought this action to recover Twenty-One Dollars which it paid in 1975 under the Federal Unemployment Tax Act [FUTA].[2] The government counterclaimed for FUTA taxes for the taxable years 1971 through 1975 in the amount of $489,675.59, plus interest. The district court concluded, on both statutory and constitutional grounds, that the IRS was without authority to revoke the University's tax-exempt status. *Bob Jones University v. United States*, 468 F. Supp. 890 (D. S. C. 1978). We reverse.

I.

A. *The University and its Racial Policies*

Bob Jones University was founded in Florida in 1927. It moved to Greenville, South Carolina in 1940 and has been incorporated there as an eleemosynary institution since 1952. Taxpayer is not affiliated with any religious denomination, but maintains a fundamentalist orientation in its educational approach. It is a religious institution in its own right, as well as an educational one.

Taxpayer accepts students from kindergarten through college and graduate school. It enrolls about five thousand students and offers some fifty accredited degrees, in addition to its nondegree Institute of Christian Service. All courses, however, are taught according to Biblical Scripture. Teachers are required to be "born again"

2. In an earlier action, filed in 1971, taxpayer attempted to enjoin the IRS from revoking its tax exempt status. In *Bob Jones University v. Simon*, 416 U. S. 725, 94 S. Ct. 2038, 40 L. Ed. 2d 496 (1974), the Supreme Court held that the Anti-Injunction Act of the Internal Revenue Code, 26 U. S. C. § 7421(a), prohibited such an action, but suggested the procedure employed here. *Id.* at 746, 94 S. Ct. at 2050.

Christians; students are screened as to their religious beliefs and their conduct is strictly regulated.

Bob Jones University believes that the Scriptures forbid interracial marriage and dating. Prior to 1971, it completely excluded blacks. From 1971 to May, 1975, taxpayer accepted no applications from unmarried black students, with the exception, since 1973, of staff members who had been at the University four years or longer. Following this court's decision in *McCrary v. Runyon*, 515 F. 2d 1082 (4th Cir. 1975) (reh. den. May 29, 1975), *aff'd* 427 U. S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976), prohibiting racial exclusion from private schools, taxpayer revised its policy. After May 29, 1975, unmarried blacks were permitted to enroll, but a disciplinary rule was added to prevent racial intermarriage and dating.

There is to be no interracial dating

1. Students who are partners in an interracial marriage will be expelled.
2. Students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be expelled.
3. Students who date outside their own race will be expelled.
4. Students who espouse, promote, or encourage others to violate the University's dating rules and regulations will be expelled.

B. *The IRS' non-discrimination policy*

Prior to 1970, the Internal Revenue Service extended tax exempt status under § 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3) to all private schools, regardless of racial policy. In 1970, however, black Mississippi parents and children obtained a prelimi-

nary injunction prohibiting the IRS, *pendente lite*, from according tax-exempt status to private schools in Mississippi which discriminated on the basis of race. *Green v. Kennedy*, 309 F. Supp. 1127 (D. D. C. 1970). The IRS later announced nationally that it would no longer allow charitable contributions and deductions, 26 U. S. C. § 170 (c)(2), and tax exempt status, § 501(c)(3), to racially discriminatory schools, including church-related schools.

On June 30, 1971, the three judge district court in *Green* ruled that the issuance of tax exempt status to racially discriminatory private schools was illegal, and issued a permanent injunction enjoining the Commissioner of Internal Revenue from approving tax exempt status to any school in Mississippi that does not publicly maintain a policy of nondiscrimination. *Green v. Connally*, 330 F. Supp. 1150 (D. D. C. 1971). That decision was affirmed by the Supreme Court in *Coit v. Green*, 404 U. S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971) (per curiam).

Following the *Green* decision, the Service formalized the nondiscrimination policy in several rulings. Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834. The 1972 procedures were superseded in 1975 by Rev. Proc. 75-50, 1975-2 Cum. Bull. 587, *see also* Rev. Rul. 75-231, 1975-1 Cum. Bull. 158 (nondiscrimination requirement for church operated schools). Revenue Procedure 75-50 provides that in order to qualify under section 501(c)(3), a private school must be able to show that all of its programs and facilities are operated in a nondiscriminatory manner.[3]

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3. In 1979, Congress passed the Treasury, Postal Service and General Government Appropriations Act, 1980, Pub. L. No. 96-74, 93 Stat. 559.

That Act provides,

§ 103. None of the Funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, . . . which would cause the loss of tax

Bob Jones University is subject to the Revenue procedures prohibiting racial discrimination in private schools. The University is an educational institution as well as a religious one. *See* 26 C. F. R. § 1.501(c)(3)-1(d)(3) (educational defined), and the rulings and procedures promulgated by the Service apply to all private schools. We decline to create an exception for religion-based schools where the Service has made none.

We, therefore, must address two questions. Does the IRS have the statutory authority to deny tax exempt status to Bob Jones University because of its racial policies and, if so, does the denial contravene the First Amendment to the Constitution of the United States?

II.

Statutory Authority for the Nondiscrimination Condition

The district court found that the University was entitled to the section 501(c)(3) exemption because "its primary purpose is religious and it exists as a religious

3. (Cont'd.)

exempt status to private, religious, or church operated schools under § 501(c)(3) of the Internal Revenue Code of 1954 *unless in effect prior to August 22, 1978.*

(emphasis added). Section 615 of the Act specifically prohibited funding of two proposed revenue procedures, 3830-01-M (44 Fed. Reg. 9451, Feb. 13, 1979) and 4830-01 (43 Fed. Reg. 37296, Aug. 22, 1978).

The effect of the Appropriations Act is clearly prospective and has no effect on the policy as enforced in this case. *See also* 125 Cong. Rec. H 5579, 5882 (daily ed. July 13, 1979) (Rep. Ashbrooke). Rather, it places a moratorium on new procedures, including the proposed procedures cited in section 615. The provision is discussed more comprehensively in Note, *The Judicial Role in Attacking Racial Discrimination in Tax Exempt Private Schools*, 93 Harv. L. Rev. 378 (1979).

institution." 468 F. Supp. at 897. The court reasoned that since the statute and the regulations enumerate seven distinct tax exempt purposes, one of which is "religious," *see* 26 C. F. R. § 1.501(c)(3)-(d)(1)(iii), the exemption must be granted once it has been established as a fact that the institution fits one of those enumerated categories.

This simplistic reading of the statute, however, tears section 501(c)(3) from its roots. In *Green v. Connally*, 330 F. Supp. 1150 (D. D. C. 1971), *aff'd per curiam sub nom. Coit v. Green*, 404 U. S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971), a three judge district court held "[t]he code must be construed and applied in consonance with the federal public policy against support for racial segregation of schools, public and private." 330 F. Supp. at 1163.[4] Accordingly, it upheld the application of the IRS's nondiscrimination condition to private schools in Mississippi which practiced racial discrimination.[5]

In that persuasive and scholarly opinion, Judge Leventhal viewed section 501(c)(3) against its background in the law of charitable trusts, concluding that to be eligible under that section, an institution must be "charitable" in the broad common law sense,[6] and therefore must not

4. In *Bob Jones University v. Simon, supra*, 416 U.S. at 740 n. 11, 94 S. Ct. at 2047 n. 11, the Supreme Court indicated that its affirmance of *Green* lacks the precedential weight of a case involving a truly adversary appeal to that court. We think the reasoning of the three judge court below, however, is persuasive and not without precedential weight.

5. In *Goldboro Christian Schools v. United States*, 436 F. Supp. 1314 (E. D. N. C. 1977), the IRS nondiscrimination condition was upheld when applied to a religiously based private school which excluded blacks.

6. This view finds additional support in the statutory framework itself: Section 170 of the Code, the companion provision to 501(c)(3), places the separately enumerated purposes in that section under the broad heading of "charitable" and permits de-

violate public policy. *Green, supra,* 330 F. Supp. at 1156-60.

The legislative history of § 501(c)(3) verifies the exempton's foundation in public policy.

> The exemption from taxation of money and property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from other public funds, *and by the benefits resulting from the promotion of the general welfare.* H. R. Rep. No. 1820, 75th Cong. 3d Sess. 19 (1939). (emphasis added)

Accordingly, it is appropriate that the Service interpreted section 501(c(3) in a manner that reflects its purpose and history. Moreover, as the *Green* court noted, tax benefits such as deductions and exclusions generally are subject to limitation on public policy grounds. In *Tank Truck Rentals v. Commissioner,* 356 U. S. 30, 78 S. Ct. 507, 2 L. Ed. 2d 562 (1958), the Court upheld the service in disallowing the deduction of fines paid for violations of highway weight limits under the "ordinary and necessary" business expense provision of the Code, 26 U. S. C. § 162. The allowance of the claimed deduction, the Court held, would frustrate the purpose of the State weight law by diluting the punishment imposed. The court held that the expense could not be deemed a "necessity" if allowing the deduction would frustrate "sharply defined" public policy. 356 U. S. at 33, 78 S. Ct. at 509.

Bob Jones University's racial policies violated the clearly defined public policy, rooted in our Constitution,

6. (Cont'd.)
duction of contributions made to organizations serving those purposes, 26 U. S. C. § 170(c)(2)(B).

condemning racial discrimination and, more specifically, the government policy against subsidizing racial discrimination in education, public or private.

Bob Jones' pre-May 1975 policy excluding unmarried black students violated public policy by subjecting black persons to restrictions which were not imposed on whites. In *Runyon v. McCrary*, 427 U. S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1975), the Supreme Court held, in a non-religious setting, that the equal right to contract provision, 42 U. S. C. § 1981, prohibits racial discrimination in non-public school admission policies. Similiar considerations apply in a religious setting. In *Bob Jones University v. Roudebush*, 529 F. 2d 514 (4th Cir. 1979) *affirming Bob Jones University v. Johnson*, 396 F. Supp. 597 (D. S. C. 1974), we upheld the denial of Veterans Administration assistance to Bob Jones University and its students under Title VI of the Civil Rights Act, 42 U. S. C. § 2000d et seq., because of this policy of excluding unmarried blacks. *See also Norwood v. Harrison*, 413 U. S. 455, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973).

The University's post-May 1975 policy applies equally to both black and white students; nevertheless, it too constitutes racial discrimination. The discrimination on the basis of racial affiliation or companionship is a form of racial discrimination is clear from Equal Protection cases such as *Loving v. Virginia*, 388 U. S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967) (law prohibiting interracial marriage unconstitutional) and *McLaughlin v. Florida*, 379 U. S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964) (interracial cohabitation law invalid), as well as § 1981 decisions, *see Tillman v. Wheaton Haven Recreational Association*, 410 U. S. 431, 93 S. Ct. 1090, 35 L. Ed. 2d 403 (1973) (white club member expelled for bringing black guests); *Faraca v. Clements*, 506 F. 2d 956 (5th Cir. 1975) *cert. denied*

422 U. S. 1006, 95 S. Ct. 2627, 45 L. Ed. 2d 669 (1976) (white man denied employment because wife was black).

We think the Service acted within its statutory authority in revoking Bob Jones University's tax exempt status because of these policies.

The University asserts, however, that this situation is special because its racial policies are grounded in sincere religious faith and therefore immutable; with or without the exemption it will maintain its present policy. The district court agreed, finding that the relationship between the exemption and the frustration of public policy against discrimination was too remote to bring the case within the narrow *Tank Truck* exception to deductibility. 468 F. Supp. at 903-04.

This argument misses the mark for two reasons. First, we are not here confronted with a computational provision designed "to tax earnings and profits less expenses and losses." *Tank Truck, supra,* 356 U. S. at 33, 78 S. Ct. at 509. Unlike section 162, section 501(c)(3) is rooted in public policy considerations wholly apart from the "broad basic policy of taxing 'net, not * * * gross, income.'" *Id.* (citations omitted) The public policy limitation, therefore, need not be so narrowly applied.

Second, the nondiscrimination policy assures that Americans will not be providing indirect support for any educational organization that discriminates on the basis of race. *Cf. Norwood v. Harrison, supra.*[7] The fact that the

7. The grant of tax exempt status to any institution necessarily confers upon it a kind of monetary benefit and constitutes a form of government support. *Walz v. Tax Commission,* 397 U. S. 664, 674-75, 90 S. Ct. 1409, 1414, 25 L. Ed. 2d 697 (1970). The Supreme Court in *Walz* held that a state property tax exemption for religious organizations evidenced a neutrality toward religion, and the level of government support conferred by the exemption was within permissible limits in light of the fact that "either course, taxation . . .

religious belief is sincere, and the policy immutable in this case does not obviate the need for a prophylactic rule to prevent such support.

III.

The First Amendment

Our approval of the government's interpretation of § 501(c)(3) brings us to the question whether application of the nondiscrimination policy to Bob Jones University violates the Free Exercise and Establishment clauses of the First Amendment.

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7. (Cont'd.)

or exemption, occasions some degree of involvement with religion." *Id.* at 674, 90 S. Ct. at 1414. Indirect aid in the form of tax benefits may, in other circumstances, constitute state aid to religion in violation of the Establishment Clause. *Committee For Public Education and Religious Liberty v. Nyquist*, 413 U. S. 756, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973) ("tax credit" to parents sending children to religious school). The basic tax exemption in this case is, on its face, more like that upheld in *Walz*, but the government "neutrality" advanced when such exemptions are granted takes on another aspect when the tax benefit goes to a religion-based school which practices, for whatever reason, racial discrimination.

The Constitution commands that government not provide any form of tangible assistance to schools which discriminate on the basis of race. *Norwood v. Harrison*, 413 U. S. 455, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973). In *Norwood* the Court remarked that the permissible scope of assistance to racially discriminatory private schools is even narrower than that permitted under the establishment clause—the Constitution is less tolerant of "neutral support" when the underlying effect is to subsidize racial inequality or segregation.

This is not to say that the tax benefit turns the University's policy into government action for Equal Protection Clause purposes. We do think, however, that government must "steer clear" of affording significant tax support to educational institutions that practice racial discrimination.

A. *The Free Exercise Clause*

The University contends that the IRS's nondiscrimination policy violates its right to freely practice its religion because it is forced to give up a valuable government benefit in order to practice its religious beliefs. Assuming that the revocation of § 501(c)(3) status does impinge upon the University's practice to some extent, *see Sherbert v. Verner*, 374 U. S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1962), the question remains one of balancing—giving due consideration to the weight of the interests asserted by the government and the extent and nature of the burden on the religious practice and the religion as a whole. *See, Wisconsin v. Yoder*, 406 U. S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 (1972). *See also*, Note, *1981 after Runyon v. McCrary: The Free Exercise Right of Private Sectarian Schools to Deny Admission to Blacks on Account of Race*, 1977 Duke L. J. 1219, 1240-1266.

The government interest in eliminating all forms of racial discrimination in education is compelling. *See, e.g., Brown v. Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954). It extends to private action as well as public, *Runyon v. McCrary*, 427 U. S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1975), and has a special vitality where the integration of public schools has made private education attractive to those who would try to turn back the clock.

Government must "steer clear" of any expression of support for racial discrimination in education. *See Norwood v. Harrison, supra*, 413 U. S. at 467, 98 S. Ct. at 2811.

In *Bob Jones University v. Roudebush*, 529 F. 2d 514 (4th Cir. 1979) (per curiam), *affirming Bob Jones University v. Johnson*, 396 F. Supp. 597 (D. S. C. 1974), we recognized that the government interest in eliminating all racial discrimination in education was sufficiently com-

pelling to justify denial, under Title VI of the Civil Rights Act, of Veterans Administration [V.A.] benefits to Bob Jones University and its students. The policy involved in that case was the same religiously based pre-1965 policy involved here: the denial of admission to unmarried blacks. The district court rejected the University's Free Exercise claim, stating:

> It is clear that the Free Exercise Clause cannot be invoked to justify exemption from a law of general applicability grounded on a compelling state interest.

396 F. Supp. at 607; we affirmed.

In *Goldsboro Christian Schools v. United States*, 436 F. Supp. 1314 (D. S. C. 1977), the government's policy of denying tax exempt status to private racially discriminatory schools survived Establishment Clause challenge by a school that excluded blacks because of its religious proscription of racial intermarriage. *See also Green v. Connally, supra*, 330 F. Supp. at 1169; *Brown v. Dade Christian Schools*, 556 F. 2d 310, 314-24 (5th Cir. 1977) (concurring opinion of Judge Goldberg).

The government interest in this case is compelling, when applied to the post-May 1975 policy of strict limitations on racial companionship as well as to the pre-May 1965 policy of excluding unmarried blacks. As discussed in part II, *supra*, the clear federal policy against racial discrimination applies to all forms of racial discrimination —governmental or private, absolute or conditional, contractual or associational.

In contrast, the government's rule would not prohibit the University from adhering to its policy.[8] Abandonment

8. A law which penalizes a person indirectly for practicing his belief may violate the Free Exercise Clause, *Sherbert v. Verner*, 374 U. S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963). The indirect nature of the "penalty" is, however, a factor to be considered in the balance.

of the policy would not prevent the University from teaching the Scriptural doctrine of nonmiscegenation. Nor is any individual student at Bob Jones University forced to personally violate his beliefs; no student is forced to date or marry outside of his race. We think these factors tip the balance in favor of the Services' nondiscrimination doctrine. *See generally,* Note, *Section 1981 after Runyon v. McCrary: The Free Exercise Right of Sectarian Schools to Deny Admission To Blacks on Account of Race,* 1977 Duke L. J. 1219; *Racial Exclusion by Religious Schools, Brown v. Dade Christian Schools, Inc.,* 91 Harv. L. Rev. 879 (1978). Comment, *The Tax Exempt Status of Sectarian Educational Institutions That Discriminate on the Basis of Race,* 65 Iowa L. Rev. 258 (1979).

B. *The Establishment Clause*

The nondiscrimination policy also passes muster under the Establishment Clause. The Establishment Clause requires that a law reflect a secular legislative purpose, have a primary effect that neither advances nor inhibits religion, and avoid excessive entanglement with religion. *Committee for Public Education and Religious Liberty v. Regan,* 444 U. S. 646, 100 S. Ct. 840, 846, 63 L. Ed. 2d 94 (1980); *Committee for Public Education v. Nyquist,* 413 U. S. 756, 773, 93 S. Ct. 2955, 2965, 37 L. Ed. 2d 948 (1973); *Tilton v. Richardson,* 403 U. S. 672, 678, 91 S. Ct. 2091, 2095, 29 L. Ed. 2d 790 (1971). The secular purpose of the rulings in question is unassailable. Taxpayer asserts, however, that the result is both the unconstitutional advancement of certain religions and government excessive entanglement in religious practices.

The district court perceived an Establishment Clause conflict created by the government's denial of tax exemption to religions which would not "stay in step" with ex-

pressed federal policy. Thus, it held "the application of the law in the manner which defendant construes it, results in government favoring those churches that adhere to federal policy, more specifically, in this case, those churches whose religious beliefs do not forbid interracial marriage." 468 F. Supp. at 900.

We agree that the Government must maintain an attitude of neutrality toward all religions. *Gillette v. United States*, 401 U. S. 437, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971); *Walz v. Tax Commission of New York*, 397 U. S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970).[9] But certain governmental interests are so compelling that conflicting religious practices must yield in their favor. Thus the court has upheld statutes prohibiting polygamy, *Reynolds v. United States*, 98 U. S. 145, 25 L. Ed. 244 (1878), or sale of religious materials by minors, *Prince v. Massachusetts*, 321 U. S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944), even though they "favor" religions that do not engage in such practices. In *Braunfield v. Brown*, 366 U. S. 599, 81 S. Ct. 1144, 6 L. Ed. 2d 563 (1961), the Court upheld Sunday closing laws, which made the practice of orthodox Jewish merchants' beliefs more expensive "because of the strong state interest in providing one uniform day of rest for all workers." Again, certain religions were "favored," but the First Amendment was not violated.

We respect the district court's concern that religions not be required always to "stay in step with expressed federal policy." The Establishment Clause protects against such intrusion. *Walz, supra* 397 U. S. at 674, 90 S. Ct. at 1414. But the principle of neutrality embodied in the Establishment Clause does not prevent government

9. *Walz* upheld that New York property tax exemptions for religious organizations, for properties used solely for religious worship, did not violate the Establishment Clause. The *Walz* opinion permits such exemptions but does not require them.

from enforcing its most fundamental constitutional and societal values by means of a uniform policy, neutrally applied. *See Gillette, supra.*

Finally, the government's rulings do not create the kind of excessive entanglement with religion recently avoided in *National Labor Relations Board v. Catholic Bishop of Chicago*, 440 U. S. 490, 99 S. Ct. 1313, 59 L. Ed. 2d 533 (1979). In *Catholic Bishop*, the Supreme Court held that the National Labor Relations Act did not require Roman Catholic religious schools to permit their lay teachers to hold representation elections, and rejected NLRB jurisdiction over alleged unfair labor practices involving such schools. The Court noted that to hold otherwise would present a significant risk that the First Amendment would be infringed. *Id.*, 99 S. Ct. at 1320. First, it would often require inquiry into the good faith of the position asserted by the clergy administrators and by the school's religious mission. Second, the Board would be called upon to decide what are "terms and conditions of employment"—an inquiry that would involve the Board in "nearly *everything that goes on in the schools.*" *Id.* (emphasis added).

In contrast, the scope of government involvement in this case is much narrower; the only inquiry is whether the school maintains racially neutral policies. And, the uniform application of the rule to all religiously operated schools *avoids* the necessity for a potentially entangling inquiry into whether a racially restrictive practice is the result of sincere religious belief. *Compare, Brown v. Dade Christian Schools, supra.* The provision in question involves minimum intrusion into the operation of the school while serving important government interests.[10]

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10. Taxation itself involves some degree of government involvement, but some degree of involvement is inevitable whether the tax exemption is granted or denied. *Walz, supra,* 397 U. S. at

IV.

In conclusion, we hold that the revocation of Bob Jones University's tax exempt status violates neither the statutory mandate of section 501(c)(3) of the Internal Revenue Code nor the First Amendment to the Constitution of the United States. The judgment of the district court is reversed with instructions to dismiss the University's claim for refund of 1975 FUTA taxes, and to reinstate the government's claim for the years 1971 to 1975 and enter appropriate judgment thereon for defendant.

REVERSED AND REMANDED WITH INSTRUCTIONS.

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10. (Cont'd.)

674-675, 90 S. Ct. at 1414. We do not think the administration of tax laws or the "hazard of churches supporting government" violate the "excessive entanglement" prong of the Establishment Clause.

APPENDIX B

Dissenting Opinion of the United States Court of Appeals for the Fourth Circuit

WIDENER, *Circuit Judge*, dissenting:

I respectfully dissent.

While I agree with the result obtained by, and much of the opinion of, the district court, I would decide the case in a somewhat different setting, and I disagree in large extent with the analysis of the majority as well as its result.

To begin with, Bob Jones, which antedates by decades the decision in *Brown v. Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), is a "fundamentalist religious organization." *Bob Jones University v. Connally*, 472 F. 2d 903, 904 (4th Cir. 1973). That has been held in this circuit when the same question now before us was before the court in a tax injunction case, and is confirmed by the extensive and correct findings of fact of the district court which are summarized just below.

> "Plaintiff is not an educational appendage of a recognized church that may allude in its educational processes to the beliefs of the parent religious order. Instead, the organizational source of plaintiff's religious beliefs is the university. The convictions of plaintiff's faith do not merely guide its curriculum but, more importantly, dictate for it the truth therein. Bob Jones University cannot be termed a sectarian school, for it composes its own religious order.
>
> "The Court finds that plaintiff's primary purpose is religious and that it exists as a religious organization. The institution also serves educational purposes. The Court further finds that during the year 1973 plaintiff

religious organization was organized and operated exclusively for religious and educational purposes." 468 F. Supp. 890 at 895.

Indeed, the Supreme Court in affirming *Bob Jones University v. Connally*, supra, stated "The university is devoted to the teaching and propagation of its fundamentalist religious beliefs." *Bob Jones University v. Simon*, 416 U. S. 725, 734, 94 S. Ct. 2038, 2044, 40 L. Ed. 2d 496 (1974).

Accepting the foregoing findings of the district court as correct, and even the majority does not claim they are clearly erroneous, and the previous findings of this court and the Supreme Court, as we must, that Bob Jones University is a religious organization, we are dealing in this case not with the right of the government to interfere in he internal affairs of a school operated by a church, but with the internal affairs of the church itself. There is no difference in this case between the government's right to take away Bob Jones' tax exemption and the government's right to take away the exemption of a church which has a rule of its internal doctrine or discipline based on race, although that church may not operate a school at all. In this opinion, I speak not to the abstract wisdom or rightness of such a rule, but to the right of a church to enforce that rule, although it may be repugnant to most of the population, if the rule is a part of its religious doctrine or discipline. The district court found and the government acknowledges that the rule against interracial dating and marriage is a genuine religious belief.

In the case before us, we are immediately dealing only with whether or not Bob Jones' rule forbidding interracial dating and marriage may be enforced without losing its tax exemption.

Briefly, I think the majority, as well as the Internal Revenue Service and the court in *Green v. Connally*, 330

F. Supp. 1150 (D. D. C. 1971) (three-judge court), affirmed per curiam *sub nom. Coit v. Green*, 404 U. S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971), misconstrued 26 U. S. C. § 501(c)(3).[1] I would construe § 501(c)(3) to grant Bob Jones University, its exemption for "religious" purposes. That being true, there is no reason to test the grant of an exemption for educational purposes, because the exemption for religious purposes has not only the protection of the First Amendment, but its authorization. *Walz v. Tax Commission*, 397 U. S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970), especially pp. 677-680, 90 S. Ct. pp. 1415-1517.

To say that there is a *direct* conflict between Bob Jones' First Amendment rights to operate free from government interference and the Fifth Amendment prohibitions against lending financial aid to institutions which practice discrimination, see *Norwood v. Harrison*, 413 U. S. 455, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973), is also not correct in this case. That is so because *Walz* also held that "The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the State." p. 675, 90 S. Ct. p. 1414. If it be argued that the holding of *Walz* as to sponsorship was decided in the context of the establishment clause and thus is not applicable here, that holding has been reinforced in *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163, 92 S. Ct. 1965, 32

1. In *Bob Jones University v. Simon*, 416 U. S. 725, 740, n. 11, 94 S. Ct. 2038, 2047, n. 11, 40 L. Ed. 2d 496 (1974), the Court indicated that its affirmance of *Green* lacked the precedential weight of a case involving a truly adversary controversy since the Internal Revenue Service adopted the plaintiff's position during the course of the litigation. In view of *Simon*, I do not consider the circuit bound by *Green* when the question is presented, as here, in adversarial context.

L. Ed. 2d 627 (1972), and *Flagg Bros., Inc. v. Brooks*, 436 U. S. 149, 98 S. Ct. 1729, 56 L. Ed. 2d 185 (1978). In *Moose Lodge* the court reversed a district court which had canceled the liquor license of Moose Lodge because it refused to serve a drink to a black guest of a member. Its constitution and bylaws limited membership to white males, and the policy and practice was to permit only Caucasian guests on lodge premises. The Court refused to find State action although the club operated with a license from the State of Pennsylvania and the operation of the club was regulated in some particulars by the State. It held that ". . . the operation of the regulatory scheme enforced by the Pennsylvania Liquor Control Board does not sufficiently implicate the State in the discriminatory guest policy of Moose Lodge to make the latter 'State action' within the ambit of the equal protection clause of the Fourteenth Amendment." p. 177, 98 S. Ct. p. 1744. The Court had previously stated that it had ". . . never held, of course, that discrimination by an otherwise private entity would be violative of the equal protection clause if the private entity receives any sort of benefit or service at all from the State, or if it is subject to State regulation in any degree whatsoever." p. 173, 98 S. Ct. p. 1742. In *Flagg Bros.*, the Court declined to find State action in a warehouseman's proposed sale of goods as permitted by the New York Uniform Commercial Code. The Court ". . . rejected the notion that our prior cases permitted the imposition of Fourteenth Amendment restraints on private action by the simple device of characterizing the State's inaction as 'authorization' or 'encouragement'". pp. 164-165, 98 S. Ct. pp. 1737-1738.

Because I feel Bob Jones is entitled to its religious exemption, the only question left is whether the religious exemption, granted by statute, may be revoked by the Revenue Service on the grounds that it is not in accord

with public policy. See *Tank Truck Rentals, Inc. v. Commissioner*, 356 U. S. 30, 78 S. Ct. 507, 2 L. Ed. 2d 562 (1958). Such questions as the extent of the protection offered Bob Jones by the First Amendment and the extent of the Fifth Amendment prohibition against aiding educational facilities which are not racially integrated come into play as they are expressions of public policy. The question which I cannot avoid, try as I have done to do so, is whether the admitted public policy of the nation favoring freedom of religion as expressed in the First Amendment is to be limited by a public policy assuring ". . . that Americans will not be providing indirect support for any educational organization that discriminates on the basis of race."[2] pp. 152-153. I do not find it necessary to deal with an absolute rule that a church may enforce with impunity any rule of its internal doctrine or discipline, no matter how repugnant, to illustrate by way of exaggeration human sacrifice, for that does not exist here. I think it of more than passing interest, however, that discrimination against women on account of their sex exists in many churches. And the same may be said of racial discrimination, probably to less extent. Yet the churches involved are among the oldest and largest of the Christian faiths in this country. The IRS, however, has not chosen to attack the problem from that angle so as to get it settled for the whole country. Rather, it chose a small, isolated, religious organization, not affiliated with a larger denomination and combined with a school, which espouses a concededly unpopular belief that many think unwise and immoral. Thus, it tries its test case here.

I think it is this court's reading of the statute, and not the district court's, that "tears section 501(c)(3) from its roots." That section's enumeration of exempt purposes is

2. For the purpose of this opinion, I assume that such a policy exists as phrased by the majority.

clear and unambiguous. Organizations are exempt which are "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes." Each of these is a distinct and separate category. By the rules of statutory construction as well as common sense, the word "or" must be read after each of the listed categories. Even the regulations of the IRS are equally unambiguous and follow the construction I think is dictated by the plain words of the statute. 26 C. F. R. § 1.501(c)(3)-1(d)(1)(i) provides an organization may be exempt "if it is organized and operated exclusively for *one or more of the following purposes:*

(a) Religious,

(b) Charitable,

(c) Scientific,

(d) Testing for public safety,

(e) Literary,

(f) Educational, or

(g) Prevention of cruelty to children or animals." (Italics added.)

The regulations also state that "Since *each* of the purposes specified in subdivision (i) of this subparagraph *is an exempt purpose in itself,* an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes." 26 C. F. R. § 1.501(c)(3)-1(d)(1)(iii). (Italics added.) All that is necessary, according to both the statute and the regulations promulgated under it is that an organization be organized and operated exclusively for one of the named purposes.

The word "charitable" appears in section 501(c)(3) merely as one of the adjectives modifying "purposes."

"Charitable" is not used in a generic sense, and is not used as descriptive of the listing of exempt organizations. Rather, "charitable" is itself listed between "religious" and "scientific." It may be, and probably is, because "charitable" is a flexible term, the meaning of which changes to fit a changing society, that Congress specifically exempted certain types of organizations whether or not they qualify as common law charities. See Neuberger & Crumplar, "Tax Exempt Religious Schools Under Attack: Conflicting Goals of Religious Freedom and Racial Integration," 48 *Fordham L. Rev.* 229, 239-40 (1979). But regardless of the reason, the simple fact is that Congress has enumerated certain exempt purposes, including "charitable," "religious," and "educational." It did not grant exemptions by reference to the law of charitable trusts.

Congress, by statute, has provided that certain classes or organizations shall be tax exempt. The district court found as a fact that plaintiff falls within one of those classes. Since that finding is not disturbed, the plaintiff is statutorily entitled to be tax exempt. Neither the IRS nor this court has the power to take away a benefit granted by Congress. The Commissioner may not add a restriction to a statute which is not there, *Commissioner v. Acker*, 361 U. S. 87, 80 S. Ct. 144, 4 L. Ed. 2d 127 (1959); nor may he deprive a taxpayer of a benefit conferred by statute, *Brooks v. United States*, 473 F. 2d 829, 832 (6th Cir. 1973). "The Courts and the Commissioner do not have the power to repeal or amend the enactments of the legislature even though they may disagree with the result; rather, it is their function to give the natural and plain meaning effect to statutes as passed by Congress." *National Life and Accident Ins. Co. v. United States*, 524 F. 2d 559, 560 (6th Cir. 1975).

This is a case of first impression so far as the Supreme Court is concerned, as well as the Courts of Appeals. The

real issue I think to be decided, as I have indicated before in this opinion, is whether the public policy favoring freedom of religion as expressed in the First Amendment is to be limited by public policy described by the majority as one meaning that Americans will not provide indirect support for any educational organization that discriminates on the basis of race. To put the question even more properly, may the two policies exist side by side, or is each so rigid that it will not accommodate the other? Assuming that the policy against discrimination on account of race is as broad as stated by the majority, I think it is not so rigid that religious organizations, although they may discriminate, may not exist in the same society. For it is the very existence of the religious organization at stake here, the power to tax involving the power to destroy. *M'Culloch v. The State of Maryland*, 4 Wheat. 316, 431, 4 L. Ed. 579, 607 (1819).

In ascertaining what is the public policy of the nation, the Supreme Court has instructed us which are the proper matters to consider in *Twin City Company v. Harding Glass Company*, 283 U. S. 353, 51 S. Ct. 476, 75 L. Ed. 1112 (1931):

> "In determining whether the contract here in question contravenes the public policy of Arkansas, the Constitution, laws, and judicial decisions of that State and as well the applicable principles of the common law are to be considered. Primarily, it is for the lawmakers to determine the public policy of the State." 283 U. S. at 357, 51 S. Ct. at 477.

Because there is no federal common law which applies to the question at hand, we must consider the Constitution, laws, and judicial decisions of the United States. Primarily, we must consider the Acts of Congress.

Those sections of the federal Constitution having application are the First Amendment, of course, and as well the Fourteenth and Fifth Amendments. We consider the First Amendment for its guarantee of religious freedom; the Fourteenth for its guarantee of equal protection of the laws; and the Fifth Amendment as it imposes on the national government under its due process clause the same limits, so far as racial segregation goes in public facilities, as are imposed on the States under the equal protection clause of the Fourteenth Amendment. *Bolling v. Sharpe*, 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954).

The extent of protection of the First Amendment to religious organizations needs little exposition. It has been called "the transcendent value" in *Norwood v. Harrison*, 413 U. S. 455, 469, 93 S. Ct. 2804, 2812, 37 L. Ed. 2d 723 (1972); and "high 'in the scale of our national values' " in *NLRB v. Catholic Bishop of Chicago*, 440 U. S. 490, 501, 99 S. Ct. 1313, 1319, 59 L. E. 2d 533 (1979). And everyone knows the saying, the firstest of the First. In all events, I contend that, with rare exceptions, the freedom of speech, assembly, the press, and religion have always occupied so high a place in the life of the nation that it cannot be doubted that the strongest possible public policy considerations support them. The Fourteenth Amendment also occupies a large place in the scheme of things. Under it *Brown v. The Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), was decided with its familiar holding that classification on account of race in the assignment of children to public schools was a violation of the amendment. And that holding has been extended, as we all know, into all fields of State action. Under *Bolling*, supra, the holding of *Brown* is extended to actions by the federal government. There is no doubt, then, that there is a public policy favoring freedom of religion and also no doubt that there is a public policy in opposition to dis-

crimination in matters involving State action. But unless something else appears, nothing has been shown to indicate to me that the two policies may not exist side by side. There is no reason I know of that the policy favoring nondiscrimination is so strong that it will not admit the existence of a religious organization which does in fact discriminate.

Various statutes of the United States touch on the subject, although none control it directly. Contrary to the majority, I feel that those statutes which throw light on the question are worthy of examination, for, as the Court has said, it is primarily for Congress to determine the public policy of the nation.

Besides the tax exemption statute immediately involved, the various Civil Rights Acts should be considered, as well as the Ashbrook Amendment.

The Civil Rights Act of 1964 outlawed most forms of racial discrimination in this country. Those provisions of the statute relating to employment and public accommodations are probably the most familiar. But that statute did not provide against discrimination in religious organizations, and, indeed, in 42 U. S. C. § 2000a(e) the statute exempted from the public accommodations title "a private club or other establishment not in fact open to the public." Further, 42 U. S. C. § 2000e-1 exempted from the equal employment title of that Civil Rights Act a religious corporation or association "with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation . . . of its activities." In 1972 Congress amended the equal employment title of the statute to require an employer to reasonably accommodate employees' religious practices if such accommodation does not result in undue hardship on the conduct of the employer's business. 42 U. S. C. § 2000e(j).

42 U. S. C. § 1981, a part of the post-Civil War Civil Rights Acts has been construed in *Johnson v. Railway Express Agency*, 421 U. S. 454, 95 S. Ct. 1716, 44 L. Ed. 2d 295 (1975), to prohibit discrimination in private employment; and in *Runyon v. McCrary*, 427 U. S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976), to prohibit racial discrimination in admission requirements to private secular schools. The statute itself provides, so far as pertinent here, that all persons shall have the same right in every State to make and enforce contracts as is enjoyed by white citizens. *Runyon*, however, specifically did not decide the question of admission to religious schools. 427 U. S. at 167, 96 S. Ct. at 2592.

The Ashbrook Amendment, P. L. 96-74, 93 Stat. 559, § 103, is the most recent expression of Congressional policy touching the question at hand. That amendment to the Appropriations Act provides that none of the funds made available shall be used to carry out any rule, policy, or procedure which would cause the loss of tax exempt status to private religious or church operated schools under § 501 (c)(3) unless in effect prior to August 22, 1978. While the amendment itself is prospective in operation as the majority points out, to say that it has no effect on public policy, I think, is simply wrong. It would be equally as wrong, for example, to say the Civil Rights acts have no place in ascertaining the public policy of the nation just because they are not squarely on point. And the same may be said of the exemptions therefrom. The majority, for example, finds support in 42 U. S. C. § 1981, which I freely admit has a bearing on the case. But if the Ashbrook Amendment has no effect on policy because prospective only, then neither does § 1981 because the rule we are immediately concerned with does not come within its literal terms.

Not only is the Ashbrook Amendment the most recent expression of Congress, it is the only expression of Con-

gress I know of on the question immediately at hand. It is the law of the land, and it has said in unmistakable terms that the IRS is prohibited from doing precisely what it has done here commencing with August 22, 1978. Were it not for its prospective operation, it would bind us here. So, it is worthwhile to look briefly at the legislative history of the Ashbrook Amendment. The House Committee Report provides in part as follows:

> The relevant House Committee report states:
>
> On August 22, 1978 and February 9, 1978, the Internal Revenue Service proposed a revenue procedure relating to the tax exempt status of private schools. At present the legislative oversight committees of both the House and Senate are considering these proposals. This Committee, too, is concerned about the Internal Revenue Service issuing revenue procedures in an area where legislation may be more appropriate. The responsibility of the Internal Revenue Service is to enforce the tax laws. The purpose of the Internal Revenue Service procedures ought to be to clarify these laws, not to expand them. The issue of tax exempt status of private schools is a matter of far reaching social significance and the Service ought to issue revenue procedures in this area only when the legislative intent is fairly explicit. The Appropriations Committee is unsure that the proposed revenue procedures issued by the Service are the proper expression of that legislative intent. The Committee believes that the Service ought not issue these revenue procedures until the appropriate legislative committees have had a chance to evaluate them and make the determination that the proposed revenue procedures are a proper expression of the tax laws.

House Committee on Appropriations, H. R. Rep. No. 96-248, 96th Cong. 1st Sess., at 14-15.

And Congressman Ashbrook, the sponsor of the Amendment, stated in the Congressional Record, 96th Cong. 1st Sess. No. 12, June 25-July 13, 1979, at H 5879-80, as follows:

> For the administrative branch to create such a policy without direction from Congress is a violation of the doctrine of the separation of powers.
>
> . . . .
>
> The Nation's churches and their schools should be free to function without regard to local neighborhood minority mixes or arbitrary "affrmative action" (sic) quota plans. Such Federal overreaching is a violation of the constitutional separation of church and State. Churches and their schools should be free to function without Federal harassment. Citizens should be able to exercise their religious freedom without meddling by the Federal bureaucracy. . . . The IRS has no authority to create public policy.
>
> . . . .
>
> So long as the Congress has not acted to set forth a national policy respecting denial of tax exemptions to private schools, it is improper for the IRS or any other branch of the Federal Government to seek denial of tax-exempt status. . . .
>
> Such policy determinations, when made without the action of Congress, become dangerous encroachments upon congressional authority. Although the Tax Code has often been termed to be an instrument of social policy, it properly becomes such only upon action or lack of action by the Congress. . . .
>
> For the IRS to select private schools as targets of its own substantive evaluation and tax exemption

denial, while leaving unhampered tax-exempt organizations which practice or promote witchcraft, homosexuality, abortion, lesbianism, and euthanasia leaves this Member confused as to the objectives of those who would make this agency into a powerful instrument to selectively implement social policy. . . .

For an agency to permit itself to be guided by pressures of pending legal action, other Federal agencies, outside pressure groups, or changes in an administration is to confuse its own role as tax collector with that of legislator, jurist, or policymaker. There exists but a single responsibility which is proper for the Internal Revenue Service: To serve as tax collector. It is the responsibility of Congress to conduct oversight over this agency to prevent transgressions into legislative authority.

Cong. Rec., 96th Cong. 1st Sess., No. 12, June 25, to July 13, 1979, at H 5879-80.

The cases which I think touch most directly on the question are to large extent a discussion of the constitutional provisions and statutes I have mentioned, and as they are expressions of public policy in the field, I will discuss them as I think they apply in the ascertainment of what is the public policy of the nation with respect to the question now before us.

As I have before pointed out, the Supreme Court has consistently held that the place of First Amendment values in our national order of things is somewhere between transcendent and high. That is emphasized by such cases as *Presbyterian Church v. Hull Church*, 393 U. S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969), in which the Court held, in a dispute over church property but which was decided as a question of church doctrine, that the State of Georgia, even through its court system had no

right under the First Amendment to resolve "underlying controversies of religious doctrine." The Court said "Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role." 393 U. S. at 450, 89 S. Ct. at 606. Thus, if the courts are forbidden to intrude even to the extent of deciding what is the doctrine of a church, that shows the considerable immunity that church doctrine has from judicial or executive inquiry, much less necessary approval. In *NLRB v. Catholic Bishop of Chicago*, supra, the Court held that the National Labor Relations Board could not compel four parochial schools to bargain collectively with a lay teachers union. Although the teachers were within the literal terms of the labor act, the court held that the danger of serious constitutional questions, a conflict between the labor act and the First Amendment, was so great that it construed the labor act to exclude the teachers. Again, in *Wisconsin v. Yoder*, 406 U. S. 205, 92 S. Ct. 1526, 32 L. Ed. 15 (1972), the Court held that those members of the Old Order Amish religion could not be required under compulsory school attendance laws to send their children to school beyond the eighth grade because such violated their religious doctrine.

These cases decided under the First Amendment are sufficient to show the extent of protection offered to religious doctrine and that to overcome this protection requires a considerable showing of a compelling state interest.

Along a different line, the Court held in *Reynolds v. United States*, 8 Otto 145, 98 U. S. 145, 25 L. Ed. 244 (1879), that the Mormon religious doctrine of taking more

than one wife was not sufficient to exempt a conviction under a bigamy statute enacted by Congress which made bigamy a felony punishable by imprisonment not to exceed five years, as well as a fine. And, in *Prince v. Massachusetts*, 321 U. S. 158, 64 S. Ct. 438, 88 L. Ed. 645 (1944), the Court upheld a fine of the custodian of a child 9 years of age for violating the child labor laws of Massachusetts in that she permitted the child to work in offering for sale publications of Jehovahs Witnesses, the selling of which was a part of the doctrine of the church. In *Reynolds*, the Court considered that religious liberty could not go so far as to "break out into overt acts against peace and good order." 8 Otto at 163, 98 U. S. at 163, 25 L. Ed. at 249. In *Prince*, the Court considered the right of a State to regulate family life to the extent that it protects the welfare of children. Neither of those considerations is present here. Bob Jones has committed no felony, and a State's right to protect the welfare of its children is simply not in the case. Also not in this case is any expression of public policy manifested by a State statute, criminal or otherwise. Neither does a federal statute directly control the subject at hand. Accordingly, while *Reynolds* and *Prince* should be considered in ascertaining what public policy to apply here, they should not be controlling.

Freedom of association also enters into consideration in this case. E.g. *NAACP v. Alabama*, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958). It must be remembered that no one is compelled to go to Bob Jones University. Entrance there is entirely voluntary. It has not and cannot be shown that Bob Jones competes in any significant way with the public schools. Cf. *Norwood* as construed in *Flagg Bros.*, 436 U. S. at p. 163, 98 S. Ct. at p. 1737. As the Supreme Court has said in *Bob Jones University v. Simon*, 416 U. S. 725, 735, 94 S. Ct. 2038, 2045, 40 L. Ed. 2d 496 (1974), "Students and faculty are

screened for adherence to certain religious precepts and may be expelled or dismissed for lack of allegiance to them." Thus, if the action of the government in granting an exemption to Bob Jones is enough state action to be considered state aid, then the action of the IRS itself in revoking the exemption on public policy grounds is itself "subject to the closest scrutiny." *NAACP v. Alabama*, at p. 461, 78 S. Ct. at p. 1171. I acknowledge that the First Amendment right of freedom of association was mentioned by the Court in *Norwood*, which stated that, when manifested by private discrimination, it had never been accorded affirmative constitutional protection accorded the Religious Clauses. And the Court further implied that high on the list of priorities as freedom of association in schools may be, it was not so high as the values inherent in the free exercise clause, 413 U. S. at pp. 469-470, 93 S. Ct. pp. 2812-2813. Thus, if Bob Jones were only a school, it might be argued that *Norwood* should control this case providing that tax exemption is equated to free textbooks. I also acknowledge that the holding in *Norwood* may be argued to be that the Fourteenth Amendment prohibition against lending aid to segregated schools is a stronger public policy than freedom of association, nevertheless the right of freedom of association does enter into this case. It is an inescapable part of Bob Jones' background, for, in addition to the First Amendment protections offered to this religious organization in its doctrine and discipline, it has the added protection of the First Amendment protection of freedom of association.

Two other cases bear on the question. The first is *Moose Lodge v. Irvis*, 407 U. S. 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972). The next is *University of California Regents v. Bakke*, 438 U. S. 265, 98 S. Ct. 2733, 57 L. Ed. 2d 750 (1978). In *Moose Lodge*, the Court upheld the right of a Moose lodge in Pennsylvania to racially discriminate in its guests although it operated under a liquor

license from the Commonwealth of Pennsylvania and its operation was regulated in some particulars by the State. The Court held that this was not State action. But the importance of the case here is that the grant of a privilege not available to all by the State of Pennsylvania was not enough action by the State to be called State action and be invalid under the Fourteenth Amendment prohibition against actions by States according to racial classification. In *Bakke*, while the Court disapproved the denial of admission of Bakke to medical school on account of his race, the Court further held that the State had a substantial interest in an admissions program "involving the competitive consideration of race and ethnic origin." The Court reversed the California court's judgment which had enjoined any consideration because of race, p. 320, 98 S. Ct. at p. 2763. It suggested that the Harvard College admissions program would be satisfactory. In that program, Harvard believed that admissions taking race into account would keep Harvard from losing a great deal of its vitality and intellectual excellence. Thus, the holding of *Bakke* is clear that a consideration of race is in some circumstances permissible. On whatever ground *Moose Lodge* was decided, its holding is that it is not the public policy of the United States to take the license from a Moose lodge with a segregated guest policy just because it operates under a State license. And that of *Bakke* is equally clear. Race may be taken into account as a factor in admitting students to a state university for reasons having to do with the vitality of the university and intellectual excellence.

Moose Lodge especially, I think, is unanswerable in the public policy context. Can we say in candor that it is more important to the nation to permit a segregated Moose lodge to operate than to permit a segregated religious organization to operate? I think not. *Bakke* is very nearly equally compelling. Can we say that it is more important

to a State university to use race as factor in admitting students to obtain overall vitality and intellectual excellence than to permit Bob Jones to maintain a rule against interracial dating and marriage when that is a part of its religious doctrine? Again, I think not.

The First Amendment, while its values may be transcendent, bends from time to time to accommodate the necessities of society. See *Near v. Minnesota*, 283 U. S. 697, 708, 51 S. Ct. 625, 628, 75 L. Ed. 1357 (1931). And, as *Reynolds* and *Prince* illustrate, the First Amendment also bends to accommodate threats to public order and the welfare of children. But I think it is a mistake to say that the public policy of not aiding in any way, no matter how indirect, any segregated activity will not yield in any particular to the First Amendment.

While racial quotas are themselves discriminatory, the cases approving them in remedial context in employment cases are too numerous to mention, the most prominent of which, of course, is *United Steelworkers of America, AFL-CIO-CLC v. Weber*, 443 U. S. 193, 99 S. Ct. 2721, 61 L. Ed. 2d 480 (1979). So it is not against the public policy of the United States for courts to lend their aid to discrimination in any form, and thus the policy against racial discrimination bends. The Civil Rights Acts themselves contain accommodations for private clubs, § 2000a(e); for employment of people of a particular religion by a religious association, § 2000e-1; and employees' religious practices which do not result in undue hardship, § 2000e(j). It is easily seen that the public policy of no discrimination as provided in the Acts of Congress also is not inflexible. *Weber* itself has construed the Civil Rights Act of 1964 to accommodate racial discrimination. With the Constitution, the statutes, and the decisions of the Supreme Court yielding to the demands of society from time to time, especially including religious demands, a "prophylactic rule to pre-

vent such [state] support," p. 153, with no "exception for religion-based schools," p. 150, imposed by the majority, is entirely too inflexible. It places the value of no discrimination protected by the Fourteenth Amendment as a matter of law above the religious protection offered by the First Amendment. I think this is a mistake. Assuming that public policy under the Fourteenth Amendment is correctly stated in the majority opinion, I do not think it is so inflexible that it may not exist side by side with the First Amendment freedoms of the Religious Clauses. I would not deal in such absolutes and would decide only the case before us as is proper in this constitutional setting. *Ashwander v. TVA*, 297 U. S. 288, 341, 56 S. Ct. 466, 480, 80 L. Ed. 688 (1936) (Mr. Justice Brandeis concurring). I would decide that Bob Jones University which is a religious institution may continue to operate in its tax exempt status consistently with a rule which may prevent government aid to secular institutions practicing segregation. I see no need to undertake to apply a prophylactic rule especially for ease of administration as the majority opinion implies is one reason for its holding. pp. 154-155.

Although the question of the admission of unmarried black students is more difficult than the rule against racial intermarriage and dating, I would decide that matter the same way for the same reasons I have expressed above.

Because I think the public policy analysis disposes of the case, I would not reach the other questions presented, *Ashwander*, supra, including the very serious question of whether the Revenue Service's revocation of tax exempt status of institutions which do not agree with its idea of public policy is in violation of the establishment clause.

I would thus affirm the judgment of the district court.

APPENDIX C

Opinion of the United States District Court for the District of South Carolina Greenville Division

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Civ. A. No. 76-775.

United States District Court,
D. South Carolina,
Greenville Division.

BOB JONES UNIVERSITY,

Plaintiff,

v.

UNITED STATES of America,

Defendant.

Dec. 26, 1978.

Wesley M. Walker, Leatherwood, Walker, Todd & Mann, J. D. Todd, Jr., O. Jack Taylor, Jr., Greenville, S. C., for plaintiff.

Steven Shapiro, Martin B. Whitaker, Attys., John F. Murray, Chief, Civ. Trial Section, Southern Region, Tax Div., Dept. of Justice, Washington, D. C., J. D. McCoy, III, Asst. U. S. Atty., Greenville, S. C., for defendant.

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

CHAPMAN, *District Judge.*

Plaintiff instituted this action to recover the amount of $21.00 which it paid in federal income taxes under the Federal Unemployment Tax Act (F. U. T. A.). The sum that plaintiff seeks to be refunded belies the importance of this litigation, since resolution of the suit requires a determination of whether plaintiff qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, 26 U. S. C. § 501(c)(3).

The controversy between plaintiff and the government originated in July, 1970, when the Internal Revenue Service publicly announced that it would no longer allow tax exempt status to private schools that practiced racial discrimination or allow gifts to such schools as charitable deductions. By letter dated November 30, 1970, the plaintiff was formally notified of this change and informed that the IRS would challenge the tax exempt status of private schools which practice racial discrimination in their admissions policies. Unable to procure an assurance of tax exemption through administrative means, the plaintiff, in September 1971, instituted an action in this court to enjoin the IRS from revoking its tax exempt status. That suit culminated in *Bob Jones University v. Simon*, 416 U. S. 725, 94 S. Ct. 2038, 40 L. Ed. 2d 496 (1974), in which the Supreme Court held that the Anti-Injunction Act of the Internal Revenue Code of 1954, 26 U. S. C. § 7421(a), prohibited the plaintiff from obtaining judicial review by way of injunctive action before the assessment or collection of any tax. The Supreme Court went on to suggest that a proper procedure for plaintiff to gain judicial review would be for plaintiff to pay ". . . an installment of FICA [Social Security] of FUTA [Federal Unemployment] taxes, ex-

haust the Service's internal refund procedures, and then bring suit for a refund." 416 U. S. 725, 746, 94 S. Ct. 2038, 2051, 40 L. Ed. 2d 496.

On April 16, 1975, the IRS notified plaintiff of the proposed revocation of its exempt status. Official revocation came on January 19, 1976, and was made effective from December 1, 1970. Subsequently, plaintiff filed FUTA returns for the period from December 1, 1970, to December 31, 1975, and paid a tax totalling $21.00 on one employee for the calendar year of 1975. The plaintiff's request for a refund was denied and plaintiff instituted this suit. In its answer to the amended complaint the government counterclaimed for approximately $490,000.00 that it had purportedly determined was due on the returns filed by plaintiff. In its Order filed October 6, 1977, this Court determined that the counterclaim was not dismissible under Rule 12(b)(6) of the Federal Rules of Civil Procedure but granted plaintiff's motion to sever, for a separate trial, those issues raised by defendant's counterclaim other than the tax status issue presented by plaintiff's amended complaint.

On May 10, 1978, the matter of plaintiff's tax exempt status was tried before the Court without a jury. After reviewing the testimony, depositions, admissions, interrogatories, exhibits, pleadings, and briefs of record and studying the applicable law, the Court, pursuant to Rule 52 of the Federal Rules of Civil Procedure, makes the following:

FINDINGS OF FACT

1. Plaintiff was founded in Florida in 1927, moving to its present location in Greenville, South Carolina in the late 1940's. Plaintiff was incorporated as an eleemosynary corporation under the laws of South Carolina on November 20, 1952, for the following purposes, as stated in its Preamble and contained in its Certificate of Incorporation:

> The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures, combating all atheistic, agnostic, pagan and so-called scientific adulterations of the Gospel, unqualifiedly affirming and teaching the inspiration of the Bible (both Old and New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the Cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.

2. Plaintiff's constitution and bylaws provide that, in the event of the dissolution of plaintiff, its residual assets are to be turned over to another organization which has been determined to be exempt from Federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code, for use of one or more of its exempt purposes, or to the Federal, State or local government, for use of one or more public purposes.

3. Plaintiff is not affiliated with any religious denomination, and, in addition, receives no aid from local, state, or federal government. Plaintiff accepts students from kindergarten through college and graduate school, offering approximately fifty degrees. It also offers a non-degree, noncredit program entitled The Institute of Christian Service to teach the principles of the Bible and train Christian character. Plaintiff enrolls approximately 5,000 students nearly one half of which are studying for the ministry or preparing to teach in Christian schools.

4. The plaintiff is dedicated to the teaching and propagation of its fundamentalist religious beliefs. Everything taught at plaintiff is taught according to the Bible. Although students may be exposed to theories that are contrary to Biblical scripture, plaintiff's teachers instruct them to disregard these theories and teach the Bible's literal language as being the only true account. The cornerstone of plaintiff institution is Christian religious indoctrination, not isolated academics.

In attempting to accomplish its purpose of training Christian leadership, the plaintiff follows the teachings of the Bible in every instance where literature or philosophy vary from the "word of God" as set forth in the Bible. This is done so that a student can learn to distinguish between that which is of God and that which is of an "anti-God" mind and combat the latter. At plaintiff, every class, every cultural event, and every athletic contest opens with prayer. Fifteen minutes at the close of each day is devoted to gathering together in small groups for prayer. Every teacher, no matter what are his academic credentials, is required to be a "born again" Christian, who must testify to at least one saving experience with Jesus Christ, and who must consider his mission at plaintiff to be the training of Christian character. Any instructor, who fails to believe in or carry out the essentials of plaintiff's Preamble, is dismissed.

5. Student applicants to plaintiff are screened as to their religious beliefs. Plaintiff has extensively enacted a multitude of disciplinary rules in line with its religious beliefs. These rules appear in a student handbook and address almost every facet of a student's life at plaintiff. Upon entry into the plaintiff, the new student has these rules of conduct reviewed for him at a "rules meeting" and is required to sign a statement that he will abide by these

rules and regulations. A small sample of these rules provides: The institution does not permit dancing, card playing, the use of tobacco, movie-going, and other such forms of indulgences in which worldly young people often engage; no student will release information of any kind to any local newspaper, radio station, or television station without first checking with the University Public Relations Director; students are expected to refrain from singing, playing, and, as far as possible, from "tuning-in" on the radio or playing on the record player jazz, rock-and-roll, folk rock, or any other types of questionable music; and, no young man may walk a girl on campus unless both of them have a legitimate reason for going in the same direction.

6. A primary fundamentalist conviction of the plaintiff is that the Scriptures forbid interracial dating and marriage. Detailed testimony was presented at trial elucidating the Biblical foundation for these beliefs. The Court finds and the defendant has admitted that plaintiff's beliefs against interracial dating and marriage are genuine religious beliefs.

7. From January 1, 1975, to May 29, 1975, plaintiff did not accept applications from unmarried black students unless the applicant had been a staff member of the University for four years or longer; married black students were permitted to enroll. During this period, plaintiff's religious beliefs were not against the admission of blacks, but barring unmarried blacks from enrollment was, in plaintiff's judgment, the safest, easiest, and most reliable method to protect its religious conviction against interracial dating and marriage. In response to the Supreme Court's decision that discriminatory admissions policies of private educational institutions were unlawful, plaintiff amended its admissions policy on May 29, 1975, to allow the admis-

sion of unmarried blacks. Plaintiff continues to adhere to its religious belief forbidding interracial dating and marriage although in its judgment this principle may be more difficult to enforce under the new policy. After May 29, 1975, plaintiff rested upon the following disciplinary rules to protect its religious beliefs:

> *There is to be no interracial dating.*
>
> 1. Students who are partners in an interracial marriage will be expelled.
>
> 2. Students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be expelled.
>
> 3. Students who date outside their own race will be expelled.
>
> 4. Students who espouse, promote, or encourage others to violate the University's dating rules and regulations will be expelled.

Plaintiff's rules regarding interracial dating and marriage constitute a part of the admissions program only insofar as an applicant who is known to the plaintiff to be a partner to an interracial couple would be denied admission.

8. Plaintiff's primary objective is in instructing, conveying, and disseminating its fundamentalist religious beliefs. Although plaintiff performs certain scholastic functions, religion reigns, molding every action, policy, and decision of the plaintiff. Plaintiff's Biblical beliefs permeate every facet of the institution. Education is only one of the means used by plaintiff to indoctrinate people with its Christian principles; religion controls and dominates education.

The fact that plaintiff is not affiliated with any denomination, yet, at the same time, is totally guided by its

fundamentalist beliefs, attests that plaintiff is a distinct religious organization in and of itself. Plaintiff is not an educational appendage of a recognized church that may allude in its educational processes to the beliefs of the parent religious order. Instead, the organizational source of plaintiff's religious beliefs is the university. The convictions of plaintiff's faith do not merely guide its curriculum but, more importantly, dictate for it the truth therein. Bob Jones University cannot be termed a sectarian school, for it composes its own religious order.

The Court finds that plaintiff's primary purpose is religious and that it exists as a religious organization. The institution also serves educational purposes. The Court further finds that during the year 1975 plaintiff religious organization was organized and operated exclusively for religious and educational purposes.[1]

CONCLUSIONS OF LAW

1. This Court has jurisdiction under the provisions of 26 U. S. C. § 7422 and 28 U. S. C. § 1346(a)(1).

2. By this action plaintiff seeks the refund of $21.00 that it paid in taxes on one employee for the calendar year of 1975 under the Federal Unemployment Tax Act (F. U. T. A.), 26 U. S. C. § 3301. Plaintiff bases its claim upon the contention that it qualifies as an exempt organization under 26 U. S. C. § 501(c)(3), and is, therefore, exempted under 26 U. S. C. § 3306(c)(8) from paying F. U. T. A.

1. Two other Courts have noted the predominance of religion in descriptions of plaintiff. The Fourth Circuit characterized plaintiff as a "fundamentalist religious organization . . ." *Bob Jones University v. Connally*, 472 F. 2d 903, 904 (4th Cir. 1973). The Supreme Court stated that "the University is devoted to the teaching and propagation of its fundamentalist religious beliefs." *Bob Jones University v. Simon*, 416 U. S. 725, 734, 94 S. Ct. 2038, 2045, 40 L. Ed. 2d 496 (1974).

taxes. Viewed in light of its actual significance, this suit serves as plaintiff's method of obtaining judicial review of the Internal Revenue Service's revocation of its earlier determination letter that plaintiff was an exempt organization under § 501(c)(3).

In support of its position the plaintiff argues that the IRS's revocation of its tax exempt status was unlawful and beyond the powers delegated it by Congress, because plaintiff meets the express provisions of § 501(c)(3) [2] and the related regulations, 26 C. F. R. § 1.501(c)(3)-1. Plaintiff also attacks the revocation as being unconstitutional in that it violates plaintiff's First Amendment right to the free exercise of its religious beliefs and its Fifth Amendment rights to due process and equal protection of the law.

To justify its revocation of plaintiff's tax exempt status, the defendant contends that plaintiff does not meet the specifications of § 501(c)(3) as interpreted by the IRS and delineated in Revenue Rulings and Procedures 71-447, 72-54, 75-50, and 75-231. In these rulings the IRS announced that, under its recent interpretation of the law, schools which racially discriminated would no longer qualify for tax exempt status. The Serivce outlined in these releases certain criterion (for example, requiring the

2. 26 U. S. C. § 501(c)(3) lists as exempt organizations:

> Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

school to show affirmatively that it does not racially discriminate and has publicized such policy) that would entitle the organization to exempt status.

The IRS determined that plaintiff did not meet these new guidelines and revoked its exempt status back to the date plaintiff was formally notified of the change in interpretation of the law. In particular, as to the year in question, 1975, defendant asserts plaintiff maintained a racially discriminatory admissions policy and that the midyear modification of plaintiff's admissions procedures did not remedy its deficiencies. Defendant argues that plaintiff still has not complied at this time because plaintiff's internal rules against interracial dating and marriage are discriminatory and constitute an integral part of its admissions policies.

The reconsideration and revocation of plaintiff's exempt status stems from a decision by the IRS to construe § 501(c)(3) as requiring religious and educational organizations to be charitable in nature. Defendant contends the legislative intent behind this exemption section was to afford exemptions only to those organizations that could be considered charitable under the common law and such law precludes an organization which violates clearly declared federal public policy from being considered charitable. Defendant continues its rationale by asserting that there exists a clearly declared public policy against discrimination by schools on the basis of race in the selection of students. Therefore, according to defendant, since it has appraised plaintiff's admissions procedures to be racially discriminatory, it argues that the law impels it to revoke plaintiff's favorable standing under § 501(c)(3).

Defendant also argues a judicially created rule of construction that Congress may not be presumed to have intended to encourage violations of public policy. If defendant confers tax exempt status on an organization which

violates public policy, defendant contends that it would thus be interpreting the statute contrary to its legislative intent.

As stated earlier, plaintiff not only contests the defendant's construction of the statute but argues that enforcement of the statute, as interpreted by the government, against plaintiff, violates its constitutional rights.

THE APPLICABILITY OF DEFENDANT'S INTERPRETATION OF SECTION 501(c)(3) TO THE PLAINTIFF

The defendant's policy of revoking tax exempt status set forth in Revenue Rulings and Procedures 71-447, 72-54, 72-50, and 75-231, applies only to educational organizations. The Court is well aware that there is substantial authority to support a finding that there exists a federal public policy which condemns racial discrimination in educational institutions; however, the Court concludes there is no corresponding clearly declared federal public policy against the practice of racial discrimination by religious organizations such as plaintiff.

The position of defendant is that an organization's principal activity governs the category into which it must fall for purposes of § 501(c)(3). Whether an organization is created and operated exclusively for exempt purposes is a question of fact. *Haswell v. United States*, 500 F. 2d 1133, 1142 (Ct. Cl. 1974). The Court has found as a fact that the principal activity of the plaintiff rests in the instruction, advancement, and propagation of its religious beliefs. Since plaintiff is categorized for purposes of § 501(c)(3) as a religious organization, defendant's declared procedure for denying tax exempt status to educational organizations that partake in racial discrimination is inapplicable to plaintiff.

The plaintiff was organized and operated in the year of 1975 exclusively for religious and educational purposes,

the predominate purpose being religious. Both of these purposes are decreed exempt purposes under § 501(c)(3). An organization that is organized and operated exclusively for one or more of such exempt purposes may be exempt. 26 C. F. R. § 1.501(c)(3)-1(d)(iii). Assuming defendant's construction of the statute that exempt organizations must not violate clearly declared public policy, the Court detects that no such policy is violated by plaintiff religious organization. Defendant does not contend nor does the Court find that plaintiff is disqualified under the remaining provisions of the statute and the corresponding regulations. Therefore, the Court concludes that for the year 1975 plaintiff was a tax exempt organization under § 501(c)(3) and, for that reason, was not liable by reason of § 3306(c)(8) for F. U. T. A. taxes during that period.

Whether the IRS's policy of denying exemptions to educational organizations that racially discriminate applies to plaintiff is merely one of several important issues presented that concern the Court and merit further discussion. The revocation of plaintiff's exempt status on the basis of defendant's interpretation of § 501(c)(3) has drastic consequences, both legally and in actual effect. The most severe is that defendant's interpretation of § 501(c)(3), which it attempts to impose upon plaintiff, creates an impermissible intrusion of its First Amendment rights and usurps the power of Congress to legislate the federal tax laws.

The Compatibility of Defendant's Interpretation of § 501(c)(3) With the First Amendment

3. The sensitive nature of First Amendment rights has long been recognized, and the judiciary has been vigilant in the protection of these rights. In the present case plaintiff alleges that defendant's revocation of its tax exempt status violates its right to the free exercise of re-

ligion guaranteed under the First Amendment.[3] Briefly stated, the issue is whether defendant's revocation of plaintiff's tax exempt status, because of policies founded on plaintiff's religious beliefs, unconstitutionally infringes upon plaintiff's right to the free exercise of religion.

The religious belief involved is plaintiff's conviction that the Bible forbids interracial dating and marriage and that God has cursed any acts in furtherance thereof. Defendant's revocation of plaintiff's tax exemption for 1975 resulted from its determination that during this time plaintiff maintained an admissions policy which discriminated on the basis of race. Until May 29, 1975, plaintiff refused to accept the admissions applications of single blacks. After plaintiff altered its admissions policy on that date to permit the acceptance of single blacks, defendant asserts plaintiff continued racial discrimination in its admissions procedure. Defendant reaches this conclusion by stating that discrimination against a person on account of the race of that person's spouse or companion is contrary to expressed public policy, and that this alleged unlawful discrimination in plaintiff's internal rules was an integral part of plaintiff's admissions policy after May 29, 1975.

Even were this Court to assume plaintiff is primarily an educational organization, it cannot agree with defendant that revocation of plaintiff's exempt status for the period beginning after May 29, 1975, because of plaintiff's admissions policy, does not violate plaintiff's free exercise rights. The Court need not rule on this constitutional claim in relation to plaintiff's admissions policy earlier that year, because the question is more sharply presented for the time period after May 29, 1975.

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3. The First Amendment to the Constitution, in part, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

At some point in scrutinizing actions surrounding the practice of a religion, a distinction must be made between actions related to a particular religious belief and the actual practice of the belief itself. In the present case, plaintiff's refusal to admit single blacks was not plaintiff's expression of its religious conviction, though the policy was based on and enacted to protect its religious beliefs. Plaintiff's prohibition of interracial dating and marriage and its refusal to approve or, in any way, encourage such conduct are the practice of its religious beliefs. Plaintiff's disciplinary rules as to interracial dating constitute the practice of its religious convictions. These rules are a direct manifestation of plaintiff's religious beliefs, and any interplay between these rules and plaintiff's admissions policy does not remove their fundamental religious nature. Thus, defendant revoked plaintiff's tax exemption for the period after May 29, 1975, because of the direct practice by plaintiff of its religious beliefs.

The limitations imposed upon the government by the free exercise clause of the Constitution were expressed by the Supreme Court in *Sherbert v. Verner*, 374 U. S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963):

> The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious *beliefs* as such, *Cantwell v. Connecticut*, 310 U. S. 296, 303, 60 S. Ct. 900, 903, 84 L. Ed. 1213, 1217, 128 ALR 1352. Government may neither compel affirmation of a repugnant belief, *Torcaso v. Watkins*, 367 U. S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, *Fowler v. Rhode Island*, 345 U. S. 67, 73 S. Ct. 526, 97 L. Ed. 829; . . . 374 U. S. 398, 402, 83 S. Ct. 1790, 1793, 10 L. Ed. 2d 965, 969.

There can be no doubt that denial of tax-exempt status to the plaintiff for the period after May 29, 1975, because of its rules regarding interracial dating and marriage penalized the plaintiff for the exercise of its religious beliefs. Plaintiff suffered not only taxation of its income but also a substantial loss of contributions since they were no longer tax deductible. That the burden imposed on the free exercise of religion may be characterized as being only indirect does not preclude the religious practice from protection under the First Amendment. *Braumfield v. Brown*, 366 U. S. 599, 607, 81 S. Ct. 1144, 1148, 6 L. Ed. 2d 563, 568 (1961). To condition the availability of benefits upon plaintiff's willingness to violate a cardinal principle of its religious faith effectively penalizes the free exercise of its constitutional liberties. *Sherbert v. Verner*, 374 U. S. 398, 406, 83 S. Ct. 1790.

A burden on First Amendment values is constitutionally permissible only if justifiable in terms of the government's valid aims. *Gillette v. United States*, 401 U. S. 437, 462, 91 S. Ct. 828, 28 L. Ed. 2d 168 (1971). The governmental interest advanced by the regulation must be a "compelling state interest" to pass constitutional muster, for it is "basic that no showing merely of a rational relationship to some colorable state interest [will] suffice." *Sherbert v. Verner*, 374 U. S. 398, 406, 83 S. Ct. 1790, 1795, 10 L. Ed. 2d 965.

Defendant argues the interest being protected is the public policy against discrimination on the basis of the race of a person's companion. See *McLaughlin v. Florida*, 379 U. S. 184, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964); *Loving v. Virginia*, 388 U. S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010 (1967). However, these cases, and other cases cited by defendant, manifest a public policy against the state assisting in such discrimination—each decision involved a finding of state action. These decisions do not represent

compelling public policy against this variety of racial discrimination in the private sector.

As authority for its position that revocation of plaintiff's tax exemption does not impermissively intrude on plaintiff's free exercise rights, defendant relies on *Goldsboro Christian Schools, Inc. v. United States*, 436 F. Supp. 1314 (E. D. N. C. 1977). But, this case is inapposite to the present situation. In *Goldsboro*, the Court was confronted with an admissions policy which totally excluded blacks. The admissions policy of the plaintiff beginning after May 29, 1975, did not exclude blacks; any possible discrimination would have to arise from the practice of its religious belief prohibiting interracial dating and marriage. The secular interest being advanced in *Goldsboro* could be considered compelling, for that interest concerned granting blacks equal access to educational institutions, an interest which this Court earlier recognized was in keeping with clearly declared public policy. On the other hand, this Court can discern no public policy of comparable magnitude with respect to the prohibition of discrimination by private institutions on the basis of the race of one's spouse or companion. Thus, revocation of the plaintiff's tax exempt status after May 29, 1975, constitutes an unconstitutional infringement of plaintiff's right to the free exercise of its religious beliefs.

The Court has discussed the free exercise problem only for the period commencing after May 29, 1975, because, as mentioned earlier, this constitutional question is more acutely presented during this time span. The constitutional problem presented by defendant's revocation is so severe that, as the Court has just shown, such conduct is not sustainable even if it is assumed plaintiff is an educational organization. This Court determines plaintiff to be a religious organization, and there has yet to be expressed any compelling public policy prohibiting

racial discrimination by religious organizations. Once plaintiff opened its doors to single blacks on May 29, 1975, regardless of whether it be classified as a religious or educational institution the defendant's revocation of its tax exempt status violated plaintiff's First Amendment right to the free exercise of religion.

In addition, the Court discerns that the construction of § 501(c)(3) advocated and applied by the defendant in this case seriously risks violation of the Establishment Clause of the First Amendment. The legal theories behind defendant's interpretation of the section and Rev. Rul. 71-447 are two-fold: one, that organizations seeking exemption for "religious" or "educational" purposes must also qualify under the common law as being "charitable", and two, that Congress did not intend to permit tax benefits to organizations which operate in contravention of sharply defined national policies.

Defendant's first mentioned legal position would deny exempt status for the plaintiff on the theory that Congress, in passing the predecessors of § 501(c)(3), intended to grant exemptions only to those organizations that could be termed "charitable" under the law of charitable trusts. The separate enumeration of other purposes in the statute, according to defendant, occurred as a result of the exercise of an abundance of caution on the part of Congress. Defendant then turns to the law of charitable trusts to support its revocation of plaintiff's tax exemption because such law disallows charitable status to organizations whose purposes or policies violate law or clearly declared federal policy.

The second legal basis for revoking plaintiff's tax exempt status proceeds on the theory that Congress will not be presumed to have intended conferral of tax benefits to institutions that operate contrary to clearly declared federal policy. See *Tank Truck Rentals v. Commissioner*,

356 U. S. 30, 78 S. Ct. 507, 2 L. Ed. 562 (1958). Thus, both legal theories, which defendant employs to maintain its construction of § 501(c)(3), rely on its interpretation that Congress intended to limit application of the statute to organizations whose activities comport with clearly defined federal policy.

Conflict with the Establishment Clause lurks within defendant's construction of the exemption provision because defendant puts no limit on its application. All religious organizations, such as plaintiff, are to be denied tax exemptions unless the IRS has judged the organization's purposes and practices to be in line with expressed federal policy. Under the government's reading of the statute, only those religious organizations, whose purposes and practices are in harmony with those of the federal government, will be granted an exemption. To preserve its tax exemption, a church, or other religious organizations, such as plaintiff, would have to make sure it stayed in step with federal public policy.

The Supreme Court in *Walz v. Tax Commission of the City of New York*, 397 U. S. 664, 90 S. Ct. 1409, 25 L. Ed. 2d 697 (1970), determined that the granting of property tax exemptions equally to *all* churches did not run afoul of the Establishment Clause. *Walz* considered the across-the-board granting of exemptions to churches and did not address the situation presented by the case at bar where defendant's interpretation of the statute requires denying exemption to some churches while granting it to others. The application of the law, in the manner which defendant construes it, results in the government favoring those churches that adhere to federal policy, more specifically, in this case, those churches whose religious beliefs do not forbid interracial marriage.

In *Tilton v. Richardson*, 403 U. S. 672, 91 S. Ct. 2091, 29 L. Ed. 2d 790 (1971), the Supreme Court reiterated its

well known test for determining if a statute contravenes the Establishment Clause:

> First, does the Act reflect a secular legislative purpose? Second, is the primary effect of the Act to advance or inhibit religion? Third, does the administration of the Act foster an excessive government entanglement with religion?
>
> 403 U. S. 672, 678, 91 S. Ct. 2091, 2095, 29 L. Ed. 2d 790.

Although the purpose of the government's construction of § 501(c)(3) may be considered secular in nature in that it promotes federal public policy, a primary effect is the inhibition of those religious organizations whose policies are not coordinated with declared national policy and the advancement of those religious groups that are in tune with federal public policy. Instead of all religious organizations being on the same footing as was the case in *Walz*, the government's construction of the section would saddle the burden of taxation only on those religious organizations whose procedures conflict with federal public policy. One form of the oppression of religion by government is the taxation of it. *Committee for Public Education v. Nyquist*, 413 U. S. 756, 793, 93 S. Ct. 2955, 37 L. Ed. 2d 948 (1973).

In *Nyquist*, the Court struck down a New York tax statute designed to assist parents who sent their children to parochial schools for having the effect of advancing religion. In so doing the Court commented as follows:

> Special tax benefits, however, cannot be squared with the principle of neutrality established by the decisions of this Court.
>
> 413 U. S. 756, 793, 93 S. Ct. 2955, 1975, 37 L. Ed. 2d 948.

The construction of § 501(c)(3) argued by the government would do away with the general grant of tax exemptions to all religious organizations, which was found in *Walz* to constitute an act of benevolent neutrality, and, in effect, transforms the statute into a law that provides a special tax benefit, because favorable tax status will be accorded only to some, not all, religious organizations. Since only selected religious institutions would receive exemption under defendant's interpretation of the law, tax exemption provided by the section no longer manifests neutrality towards all religions but, rather, favors some over others. The effect is to strengthen those religious organizations whose religious practices do not conflict with federal public policy and to discriminate against those religious groups whose convictions violate these secular principles. The unavoidable effect is the law's tending toward the establishment of the approved religions.

Regarding the element of entanglement, defendant, through its interpretation of § 501(c)(3), seeks the approval of this Court to indulge in the extensive entanglement which, the *Walz* Court decided, is avoided by across-the-board exemptions to religious organizations. Under defendant's theory, the government would be required to monitor continually the practices of all religious organizations to determine their entitlement to exemption. This Court, however, need not further speculate as to whether defendant's interpretation of the statute results in an unlawful entanglement between government and religion, since it has already concluded that implementation of defendant's construction of the section would have the impermissible effect of discriminating between religions. *Committee for Public Education v. Nyquist*, 413 U. S. 756, 794, 93 S. Ct. 2955, 37 L. Ed. 2d 948.

The decisions relied upon by defendant to support its reading of § 501(c)(3) fail to consider defendant's interpretation of the statute as applied to religious organizations

and how such interpretation could be sustained under the Establishment Clause. *Green v. Connally*, 330 F. Supp. 1150 (D. D. C. 1971) (three judge court), aff'd per curiam sub nom. *Coit v. Green*, 404 U. S. 997, 92 S. Ct. 564, 30 L. Ed. 2d 550 (1971);[4] *Goldsboro Christian Schools, Inc. v. United States*, 436 F. Supp. 1314 (E. D. N. C. 1977). The statute, when applied as it is written, engages the government in a constitutionally approved act of neutrality, preserving a healthy separation of church and state. On the other hand, defendant's construction of the statute, by supplying an economic advantage to those religions which conform to federal public policy, leads, in many respects, to an identity between church and state.

DEFENDANT'S INTERPRETATION OF § 501(c)(3) IN RELATION TO THE POWER DELEGATED IT BY CONGRESS.

4. Defendant acknowledges that the limitation which it has attached to the § 501(c)(3), that an organization qualifying under one or more of the listed exempt purposes may be denied exemption if its practices violate public policy, has no support in the language of the section. The construction which the IRS has placed on § 501(c)(3) troubles this Court. The sole legal basis for defendant's revocation of plaintiff's tax exempt status and its promulgation of Revenue Rulings and Procedures 71-447, 72-54, 75-50, and 75-231, is defendant's construction of § 501 (c)(3). This Court concludes that defendant's interpretation cannot be sustained and that this deficiency establishes an additional ground for ruling in favor of plaintiff.

4. During the course of the litigation of *Green*, the defendant adopted plaintiff's position, and, thus, the decision was not the outcome of a true adversarial contest. The Supreme Court has noted that its affirmance in *Green*, for this reason, lacks the precedential weight of a case involving a truly adversary controversy. *Bob Jones University v. Simon*, 416 U. S. 725, 740, n. 11, 94 S. Ct. 2038, 40 L. Ed. 2d 496.

The enumeration of exempt purposes in § 501(c)(3) is plain and unambiguous—"religious, charitable, scientific, testing for public safety, literary, or educational purposes, ..." The corresponding regulations speak with equal clarity and state, in part, as follows:

> (d) *Exempt Purposes*—(1) *In general.* (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:
>
> (*a*) Religious,
>
> (*b*) Charitable,
>
> (*c*) Scientific,
>
> (*d*) Testing for public safety,
>
> (*e*) Literary,
>
> (*f*) Educational, or
>
> (*g*) Prevention of cruelty to children or animals.
>
> • • •
>
> (iii) Since each of the purposes specified in subdivision (i) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. 26 C. F. R. § 1.501(c)(3)-1(d)(1), (2).

Both the statute and the related regulation separately enumerate the various exempt purposes as being independent and sustaining. This Court must sustain the regulation because it is neither unreasonable nor plainly inconsistent with the revenue statute. *DeTreville v. United States*, 445 F. 2d 1306, 1311 (4th Cir. 1971).

The interpretation of the section invoked by defendant to revoke plaintiff's exempt status acts to place a limitation or condition on the section's express terms. Plaintiff religious organization is organized and operated exclusively for religious and educational purposes, yet defendant denies it exempt status. The device that defendant utilizes to place a condition on the unqualified language of the statute is the legal principle that taxing statutes are construed to give effect to legislative intent. Applying this rule of construction to the present case, defendant reaches the conclusion that the intent of Congress was not to grant exempt status to those organizations, otherwise qualifying, whose policies violate federal public policy.

The Courts, which have interpreted § 501(c)(3) as restricted to those organizations in accord with federal policy, base their rationale on the judicial precept that congressional intent in providing tax deductions and exemptions is not construed to be applicable to activities that are illegal or contrary to public policy. *Green v. Connally,* 330 F. Supp. 1150, 1161 (D. D. C. 1971), *Goldsboro Christian Schools, Inc. v. United States,* 436 F. Supp. 1314, 1318 (E. D. N. C. 1977). In so construing the statute, these Courts refused to premise their conclusion upon defendant's alternate theory in support of its position, mentioned earlier, that Congress, in setting forth the various exempt purposes, intended to require qualification under the law of charitable trusts. With all due deference to the Courts in *Green* and *Goldsboro,* this Court believes that these decisions did not fully consider the nature of the limitation they engrafted on the statute.

In deciding that tax exemptions were not intended to be granted to organizations which violate public policy, both the Court in *Green* and in *Goldsboro* rely on the Supreme Court's opinion in *Tank Truck Rentals v. Commissioner,* 356 U. S. 30, 78 S. Ct. 507, 2 L. Ed. 2d 562

(1958). The *Tank Truck* decision involved public policy as the basis for denying deduction of specific expenses; it did not concern public policy as the basis for denying the complete exemption of an organization due to a select practice of it. The defendant has failed to bring to this Court's attention any judicial decisions, other than *Green* and *Goldsboro* where this public policy rationale has been used to deny exemptions.[5] Nevertheless, the *Tank Truck* decision is instructive in the present case.

In *Tank Truck*, the taxpayer sought to deduct, as a business expense, amounts paid in fines occurring in the course of its business for violations of a state penal statute. After finding that allowing this deduction would encourage violations of state law, the Supreme Court defined the scope of the public policy limitation as follows:

> This is not to say that the rule as to frustration of sharply defined national or state policies is to be viewed or applied in any absolute sense. *"It has never been thought . . . that the mere fact that an expenditure bears a remote relation to an illegal act makes it non-deductible." Commissioner v. Heininger,* supra (320 U. S. 467 at 474 [64 S. Ct. 249, at page 253, 88 L. Ed. 171]). Although each case must turn on its own facts, *Jerry Rossman Corp. v. Commissioner* (CA2) 175 F. 2d 711, 713, *the test of nondeductibility always in the severity and immediacy of the frustration resulting from allowance of the deduction.* The flexibility of such a standard is necessary if we are to accommodate both the congressional intent to tax only net income, and the presumption against congressional

5. *Universal Life Church, Inc. v. United States,* 372 F. Supp. 770 (E. D. Cal. 1974), cited by defendant, did not expressly adopt defendant's interpretation of § 501(c)(3) but, instead, decided that, even under defendant's interpretation, plaintiff qualified for tax exempt status.

> intent to encourage violation of declared public policy. [Emphasis Added]. 356 U. S. 30, 35, 78 S. Ct. 507, 510, 2 L. Ed. 2d 562.

Thus, assuming that permitting a deduction closely compares to granting an exemption as the defendant argues, the Court must analyze the facts of this case to determine if conferral of exempt status to plaintiff severely and immediately frustrates national policy.

A comparison of the facts of this case with the criterion established by the Supreme Court for invoking the public policy exception immediately reveals an absence of the close relationship required to exist between the tax benefit and the frustration of federal policy. In *Tank Truck*, the Supreme Court found that allowing deduction of fines for illegal acts would frustrate a state policy in severe and direct fashion by reducing the "sting" of the penalty and encouraging violations. To the contrary, permitting tax exempt status to plaintiff does not so act as to encourage plaintiff to discriminate on the basis of race. Plaintiff's racial views result from sincerely held religious beliefs. Regardless of plaintiff's tax status, its religious beliefs remain immutable. The relationship between plaintiff's exemption and a national public policy against discrimination is simply too remote. In instances where a deduction has been denied on the ground of this public policy limitation, the relationship between the questioned expense and the applicable policy has been sufficiently close that allowance of the deduction directly and in a significant manner frustrates the clearly defined policy such as where the expenditure itself is illegal or is paid as a penalty for an unlawful act. *Tank Truck Rentals v. Commissioner*, 356 U. S. 30, 35, 36, 78 S. Ct. 507, 2 L. Ed. 2d 562. See also, Annot. 27 A. L. R. 2d 498 (1953). The mere fact that a taxpayer, who receives a tax benefit, has violated public policy does not, by itself, require a denial of the tax benefit.

Thus, the judicially created "public policy" limitation is much restricted [6] and not applicable to situations, such as the case at bar, where the relationship between the tax benefit and the proscribed conduct is tenuous. The nature of this relationship is crucial to the application of the doctrine but was not examined by the Court in *Green* or *Goldsboro*.[7] The defendant ignores this required nexus inadvocating a construction of § 501(c)(3) that any organization, seeking exemption, whether its purpose be religious, educational or otherwise, must comport with clearly defined federal policy. Defendant requires no relationship between the unlawful conduct and the exemption. According to defendant's application of the public policy limitation expressed in *Tank Truck*, exempt status would be denied to any church that somehow committed a violation of a federal statute, a recognized expression of pe-

6. The Supreme Court expressed its view that the doctrine should be confined rather than expanded, as the defendant attempts to do, in application in *Commissioner v. Tellier*, 383 U. S. 687, 86 S. Ct. 1118, 16 L. Ed. 2d 185 (1966):

> But where Congress has been wholly silent, it is only in extremely limited circumstances that the Court has countenanced exceptions to the general principle reflected in the Sullivan, Lilly, and Heininger decisions [which permitted deduction of expenses qualifying under the terms of the statute despite conduct of the taxpayer that was contrary to public policy]. . . . The present case falls far outside that sharply limited and carefully defined category.

383 U. S. 687, 693-694, 86 S. Ct. 1118, 1122, 16 L. Ed. 2d 185.

7. The following excerpt from the *Goldsboro* opinion illustrates the decision's failure to take into consideration the relationship between the tax benefit and the actual frustration of a clearly defined federal policy:

> It cannot be assumed that Congress intended to confer this encouragement, however *indirect*, to organizations which actively violate declared national policy. [Emphasis added]. 436 F. Supp. 1314, 1318.

cleared federal policy, because defendant's theory requires no showing of any relation between conferral of the exemption and frustration of the federal policy.

The relationship between the tax benefit and the proscribed conduct in the present case is similar to that in *Commissioner v. Tellier*, 383 U. S. 687, 86 S. Ct. 1118, 16 L. Ed. 2d 185 (1966). In *Tellier* the Supreme Court determined that legal fees incurred by the taxpayer in the unsuccessful defense of a criminal prosecution involving the taxpayer's business did not fall within the "public policy" exception. The taxpayer in *Tellier* was exercising his constitutional right to counsel; plaintiff in the instant case is exercising its First Amendment right to the free exercise of religion as manifested by its racial policies. The taxpayer's exercise of his constitutional right in *Tellier* was held not to frustrate any public policy. Similarly, in the present case, in the absence of any showing that allowance of an exemption to the plaintiff will itself act to dilute severely and directly public policy, the application of the "public policy" exception is not warranted.

On a related matter, defendant argues that the circumstances are more compelling in the present case than in *Tank Truck* for employing the public policy limitation. Defendant's contention is that in *Tank Truck* the Court had to balance public policy considerations against the competing only net income, while in the present case, defendant asserts, there exists no comparable countervailing consideration with respect to § 501(c)(3).

This Court disagrees with defendant and detects that there does exist a competing consideration underlying § 501(c)(3) that must be weighed against public policy limitations. Defendant recognizes in its argument that the legislative intent behind this section was that exemptions should be granted to those organizations formed for the listed purposes, because they provide a reciprocal benefit

to the public. The desire of Congress not to tax religious and educational organizations that, presumptively, benefit society does represent a competing consideration in this case to counterbalance the presumption against congressional intent to encourage violation of declared public policy.[8] As to defendant's theory that the public policy exception expressed in *Tank Truck* supports its interpretation of § 501(c)(3), the case in dispute must undergo, and this Court so performed, the same rigorous analysis required by Supreme Court in *Tank Truck* for determining the applicability of this limited doctrine.

The *Tellier* decision not only instructs concerning the public policy exception but also makes an important pronouncement involving the federal income tax laws in general that, in this Court's opinion, especially pertains to the case at bar. In defining the scope of the tax law, the Court decreed the following:

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8. In the course of defendant's argument that there is no competing consideration to offset the public policy exception, defendant suggests that, because it has determined plaintiff racially discriminates, plaintiff does not benefit the public and, thus, does not merit exemption. The Court considers defendant's logic on this point as somewhat of a nonsequitur, seemingly stemming from its confusion of the terms "public policy" and "public benefit". The two are not synonymous. Public policy is many faceted, one facet of which is that society may provide relief from taxation to those organizations, such as plaintiff religious organization, that are of benefit to the public. The good resulting to the public from these groups depends upon the fulfillment of their purposes. Because one of these organizations may have, in an area of its operations, engaged in conduct that might not have been completely in line with some other aspect of public policy does not automatically mean the public no longer benefits from the organization. Defendant seems to imply that a change in plaintiff's policies to conform to defendant's guidelines would transform the religious organization from one that did not benefit the public into one that did, although the function and purposes of plaintiff remain unchanged throughout.

> We start with the proposition that the federal income tax is a tax on net income, not a sanction against wrongdoing. That principle has been firmly imbedded in the tax statute from the beginning. One familiar facet of the principle is the truism that the statute does not concern itself with the lawfulness of the income that it taxes.
>
> 383 U. S. 687, 691, 86 S. Ct. 1118, 1120, 16 L. Ed. 2d 185.

The deduction and exemption provisions of the Code, where Congress has been wholly silent, are to be applied equally without regard to whether the taxpayer has committed an illegal act or violated public policy. Only under very limited circumstances, later pointed out in the *Tellier* opinion, where there exists a direct correlation between allowance of the tax benefit and direct, actual frustration, or encouragement of such frustration, of a clearly defined governmental policy, will public policy preclude bestowing the tax benefit.

The Court reads the above quote from *Tellier* as the Supreme Court's admonishment of defendant not to use the tax laws as a means of enforcing other laws and public policies if the revenue statute makes no mention of such conduct or if there does not exist a tight nexus between the tax benefit and the alleged unlawful conduct. The defendant's blanket policy announcements in Revenue Rulings and Procedures 71-447, 72-54, 75-50, and 75-231, that it will deny tax exempt status to organizations which racially discriminate, but otherwise qualify under § 501 (c)(3), constitute a use by the IRS of the federal tax law as a sanction for what it considers a wrongdoing, or its idea of proper social conduct of persons of different races, uses of the Code prohibited by the Supreme Court. The underlying purpose of these Revenue Rulings and Procedures is so clear as not to require scrutiny of the taxpayer

on a case by case basis to determine the relationship between permission of the exemption and its role in severely and immediately frustrating public policy, as is required by the Supreme Court to trigger the public policy exception.

In these administrative pronouncements the IRS, in effect, announced that it will implement § 501(c)(3) on the basis of whether the taxpayer has abided by federal law or public policy. The section is to become the IRS's mechanism for disciplining wrongdoers or promoting social change. The Supreme Court ruled in *Tellier* that use of the tax laws for the former purpose is improper and it follows that the same rule would apply to the latter. In addition, the Court is concerned with the many dangers inherent in defendant's interpretation that exemptions may be revoked for violations of federal public policy. Federal public policy is constantly changing. When can something be said to become federal public policy? Who decides? With a change of federal public policy, the law would change without congressional action—a dilemma of constitutional proportions. Citizens could no longer rely on the law of § 501(c)(3) as it is written, but would then rely on the IRS to tell them what it had decided the law to be for that particular day. Our laws would change at the whim of some nonelected IRS personnel, producing bureaucratic tyranny.

This Court has brought to light the legal and administrative problems presented by defendant's construction of § 501(c)(3) because the Court finds this construction is not supported by any theory defendant advances to show that legislative intent warrants its interpretation. The Court has already, at length, commented on why the judicially created presumption against congressional intent to encourage violations of federal policy does not apply to the present case. The Court also rejects defendant's other basis for its construction of the section—that

the original legislative history behind the section indicates that Congress, although it separately stated the several exempt purposes, intended only to exempt those organizations which could qualify as charitable under the common law.

Congress' individual listing of exempt purposes within § 501(c)(3) strongly suggests that it intended to make each of the enumerated purposes an exempt purpose in itself. Defendant, without reference to the actual legislative history in support of its contention asks this Court to rule that the separate enumeration of "religious" and "educational" is superfluous and redundant because the term "charitable" includes the former two terms. Absent any specific legislative history sustaining defendant's contention, the Court will not indulge in such a construction of the section. It is not " 'permissible to construe a statute on the basis of a mere surmise as to what the Legislature intended and to assume that it was only by inadvertence that it failed to state something other than what it plainly stated'." *United States v. Deluxe Cleaners and Laundry, Inc.*, 511 F. 2d 926, 929 (4th Cir. 1975). Moreover, if a statute admits a reasonable construction which gives effect to all its provisions, this Court may not adopt a strained reading which renders one part a mere redundancy. *Jarecki v. G. D. Searle & Co.*, 367 U. S. 303, 307-308, 81 S. Ct. 1579, 6 L. Ed. 2d 859 (1961).

Defendant fails to bring forth any legislative history that would compel this Court to depart from these cardinal rules of statutory construction. Those cases, which defendant cited in support of its interpretation, referred to the common law to construe the term "charitable", as used in the Act, and did not rule that Congress intended that organizations, qualifying for the other listed exempt purposes, must also qualify as being charitable under the common law. *Pennsylvania Co. for Insurance on Lives,*

Etc. v. Helvering, 62 App. D. C. 254, 66 F. 2d 284 (1933); *Girard Trust Co. v. Commissioner*, 122 F. 2d 108 (3rd Cir. 1941). These decisions approved reference to the law of charitable trusts to construe a word, "charitable", within the statute, not to construe the entire section as defendant now seeks. This Court finds no indication that Congress intended to exempt only those organizations that are "charitable". In light of the plain, unambiguous language of § 501(c)(3) this Court must give effect to those exempt purposes specified besides "charitable" and rule that organizations seeking exemption for such purposes need not also qualify as being "charitable".[9]

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9. The meager amount of legislative history which this Court has been able to undercover concerning the original predecessor of § 501(c)(3) does not suggest that "religious" and "educational" were intended to be synonymous with "charitable". During the House debate in 1913 on the Bill that became the first modern income tax law, an amendment was offered to add "scientific" and "benevolent" to the list of types of corporations exempted under the Bill, which already exempted religious, charitable, or educational corporations. Rep. Hull, in speaking for the Bill, opposed the amendment by stating:

> Of course any kind of society or corporation that is not doing business for profit and not acquiring profit would not come within the meaning of the taxing clause of paragraph G. So I see no occasion whatever for undertaking to particularize, because we could find innumerable kinds of these charitable or educational or other organizations called by different names, and there would be no end to it.
>
> 50 Cong. Rec. 1306

"Charitable" and "educational" are spoken of as different types of nonprofit organizations covered by the exemption clause; the terms are used in an exclusive, not inclusive sense. It cannot be concluded from this passage that exempt status under the clause was to be limited only to corporations meeting the definition of "charitable" under the law of charitable trusts.

[Subsequently, the Senate amended the Act so that in its final form it did include "scientfic". 50 Cong. Rec. 3856. 38 Stat. 172.]

Since both of defendant's alternate theories regarding legislative intent fail to support restricting § 501(c)(3) exempt status to organizations whose practices are in unison with federal public policy, defendant's construction of the law is unfounded. Furthermore, the statute contains no language creating the limitation contended by defendant. Although plaintiff satisfies the written requirements of § 501(c)(3) defendant has revoked its exemption. Thus, the IRS in this case and in its policy pronouncements, as exemplified by Rev. Rul. 71-447, has enacted in substance and effect a change in the law.

In enforcing a construction of the statute which is unwarranted by its legislative history or express terms, the IRS has overstepped its authority and usurped that of Congress. In *Manhattan General Equipment Co. v. Commissioner*, 297 U. S. 129, 56 S. Ct. 397, 80 L. Ed. 528 (1935), the Supreme Court clearly delineated the bounds of an agency's power:

> The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity.
>
> 297 U. S. 129, 134, 56 S. Ct. 397, 400, 80 L. Ed. 528.

"This reasoning applies with even greater force to the Commissioner's rulings and acquiescences." *Dixon v. United States*, 387 U. S. 68, 75, 85 S. Ct. 1301, 1305, 14 L. Ed. 2d 223 (1965). By altering the law in the present case, the IRS has attempted to exercise a power that is reserved only to Congress. The rulings and procedures which the IRS has used to change the law are a nullity.

The revocation by the IRS of plaintiff's tax exempt status under its misinterpretation of § 501(c)(3) is unlawful and unconstitutional.

It is the province of Congress, not the IRS, to make the federal tax laws. The law that Congress has passed in this instance is clear and unambiguous and this Court will give it effect. Should Congress desire to change the law, it may so do in keeping with the Constitution. This Court cannot, and will not, approve changes in the law by an administrative agency that completely bypass the legislative process.

CONCLUSION

5. Having determined that revocation of plaintiff's tax exempt status by defendant was improper under defendant's own rulings and procedures, violated plaintiff's First Amendment rights, and resulted from the Treasury's exceeding those powers delegated to it, the Court determines that it is unnecessary to examine further claims made by plaintiff. For the foregoing reasons, the Court concludes plaintiff was entitled to exemption for the calendar year of 1975 under § 501(c)(3) and is, therefore, entitled, pursuant to § 3306(c)(8) of the Act, to judgment against defendant for the amount of $21.00 representing a refund of the F. U. T. A. tax previously paid.

AND IT IS SO ORDERED.

APPENDIX D

Opinion of the United States District Court for the District of South Carolina Greenville Division

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action No. 79-163

Bob Jones University,

Plaintiff,

v.

W. Michael Blumenthal, Secretary of the Treasury, and Jerome Kurtz, Commissioner of Internal Revenue,

Defendant.

This matter is before the Court on plaintiff's motion for preliminary relief and on defendants' motion to dismiss. The Court heard these motions on April 16, 1979.

Plaintiff brings the instant action to effectuate the decision of this Court in *Bob Jones University v. United States of America*, Civil Action No. 76-775, [*Bob Jones II*], in which, by Orders dated December 26, 1978, and January 11, 1979, the Court determined plaintiff was a religious organization exempt from taxation under 26 U. S. C. § 501 (c)(3). The earlier suit, now on appeal by the United States to the U. S. Court of Appeals for the Fourth Circuit,

was a refund action by plaintiff and resulted in a determination in plaintiff's favor both on it's claim and the government's counterclaim. Despite this Court's ruling in *Bob Jones II*, the Internal Revenue Service of the Department of the Treasury has failed to reinstate plaintiff as an organization exempt from taxation in its "Bulletin", its "Cummulative List of Organizations" (Publication 78), or by issuance of a "Ruling Letter", thus refusing to give any practical effect to the judicial determination of plaintiff's status. By way of the present action, plaintiff seeks a mandatory injunction, in the nature of mandamus, compelling defendants to make the above restoration and publication of its exemption from taxation and enjoining defendants from issuing, in the future, these publications unless the plaintiff is listed as an exempt organization. Plaintiff's present motion seeks preliminary injunctive relief.

Defendants move this Court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, to dismiss the action for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. The basis of defendants' motion is that the present action is barred under the Anti-Injunction Act of the Internal Revenue Code of 1954, 26 U. S. C. § 7421, and the Declaratory Judgment Act, 28 U. S. C. §§ 2201, 2202. Defendants further contend that the doctrine of sovereign immunity precludes the relief sought by plaintiff.

Because of the Supreme Court's repeated strict construction of 26 U. S. C. § 7421, as illustrated by its opinion in plaintiff's first attempt to secure judicial review in *Bob Jones University v. Simon*, 416 U. S. 725 (1974) [*Bob Jones I*], this Court conceives the application of this statute to be the major question presented by both motions. Moreover, the Fourth Circuit has held the federal tax exception to the Declaratory Judgment Act is co-extensive with the

Anti-Injunction Act, *Jules Hairstylists of Maryland, Inc. v. United States*, 268 F. Supp. 511, 515 (D. Md. 1967), aff'd 389 F. 2d 389 (4th Cir. 1968), cert. denied, 391 U. S. 934 (1968). As a result of this interpretation, a decision as to whether plaintiff's suit is barred by 26 U. S. C. § 7421 will also determine whether such action can be maintained under 28 U. S. C. §§ 2201, 2202.

The defendants argue that, for purposes of § 7421(a),[1] the posture of the present case is essentially indistinguishable from *Bob Jones I*. Defendants contend that the instant action to compel the restoration of plaintiff's exemption and advance assurance of deductibility of contributions is a suit for the "purpose of restraining the assessment or collection" of a tax, and, as such, is squarely barred under *Bob Jones I*. The Court, however, disagrees with this characterization of the present suit and concludes the Supreme Court in *Bob Jones I* left the issue of injunctive relief in a refund action, an open question.

The case now before the Court differs substantially from that before the Supreme Court in *Bob Jones I*. Simply stated, that decision involved a pre-enforcement action by plaintiff for injunctive relief to enjoin the defendants from revoking plaintiff's tax exempt status. After deciding that plaintiff's suit was precluded under § 7421(a), the Supreme Court in *Bob Jones I* suggested a means whereby plaintiff could properly secure judicial review.[2] Plaintiff followed

1. The section provides the following:

§ 7421. Prohibition of suits to restrain assessment or collection

(a) Tax.—Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b) and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed. . . .

2. 416 U. S. 725, 746.

this directive in *Bob Jones II*, by instituting a suit for refund. This Court then made the requisite findings of fact and conclusions of law, embodied in its Order dated December 26, 1978. Thus, unlike *Bob Jones I*, the case at bar does not involve a pre-enforcement action for injunctive relief, since the question of plaintiff's exemption from taxation has been properly adjudicated and determined.

By way of footnote in *Bob Jones*, I, the Supreme Court expressly stated that its decision was not dispositive of the question of whether § 7421(a) bars the present suit:

> [2] Petitioner did not bring this case as a refund action. Accordingly, we have no occasion to decide whether the Service is correct in asserting that a *district court* may not issue an injunction in such a suit, but is restricted in any tax case to the issuance of money judgments against the United States . . . . For example, it may be possible to conclude that a suit for a refund is not "for the purpose of restraining the assessment or collection of any tax . . . ," and thus that neither the literal terms nor the principal purpose of § 7421(a) is applicable. Moreover, such a suit obviously does not clash with what the Court referred to in Williams Packing, supra, as a "collateral objective of the Act—protection of the collector from litigation, pending a suit for refund." 370 U. S. at 7-8, 8 L. Ed. Ed. 2d 292. And there would be a serious question about the reasonableness of a system that forced a § 501(c)(3) organization to bring a series of backward-looking refund suits in order to establish repeatedly the legality of its claims to tax-exempt status and that precluded such an organization from obtaining prospective relief even though it utilized an avenue of review mandated by Congress

> . . . . *But our decision today that § 7421(a) bars preforcement injunctive suits by organizations claiming § 501(c)(3) status unless the standards of Williams Packing are met should not be interpreted as deciding whether injunctive relief is possible in a refund suit in a district court.* 416 U. S. 725, 748, n. 22 [Emphasis added].

Defendants interpret the above comment to prohibit injunctive relief until a "final decision in a refund suit". Defendants' Memorandum in Support of their Motion to Dismiss, p. 11. By the term "final", defendants mean the conclusion of the appellate process.

Defendants' construction of footnote 22 has no foundation therein. The Supreme Court twice makes reference to the jurisdiction of a "district court". In discussing the possibility of injunctive relief for the taxpayer, the Supreme Court necessarily was considering the situation where a taxpayer prevailed in a refund action in district court. The Supreme Court was equally aware that the government could appeal such an adverse determination, yet it does not qualify the possibility of injunctive relief as turning on the outcome of an appeal. Rather, footnote 22 unequivocally focuses on the power of a district court and leaves unanswered the question now confronting this Court.

The defendants cite *Marvel v. United States*, 548 F. 2d 295 (10th Cir. 1977) in support of their position that § 7421(a) precludes the instant action. In *Marvel*, the plaintiffs sought to enjoin the IRS from levying on their assets during the pendency of their suit for refund. The Tenth Circuit found the relief sought was barred by § 7421(a). *Marvel*, however, did not decide the propriety of such relief *after* a judicial determination in favor of the taxpayer in the district court in a refund action—

the present case. The Tenth Circuit in *Marvel*, while failing to decide it, recognized the issue in the instant action in the following:

> A more complete reading of these cases [*Bob Jones* I and *"Americans United"*, the companion case of *Bob Jones I*] indicates the Supreme Court was concerned with the range of remedies available *after* a final determination had been reached in a refund suit, *viz.*, whether a district court could enjoin the IRS from withdrawing an organization's 501(c)(3) status after the legality of the organization's claim to such status had been judicially determined. 548 F. 2d 295, 299 [Emphasis in original].

The Tenth Circuit similarly frames the question as one involving the district court. Furthermore, the Court in *Marvel* speaks of the outcome of a refund suit in district court in terms of being a "final determination" and makes no requirement of completion of the appellate process.

Whether this Court's decision in *Bob Jones II* may be considered as "final" is not determinative of whether the present action is precluded by the construction of § 7421 (a) by the Supreme Court in *Bob Jones I* and by the Tenth Circuit in *Marvel*.[3] What is controlling is that these two courts classify the open question as one involving the power of the district court after its determination of a plaintiff's § 501(c)(3) status in a refund action. Having concluded that existing decisions leave unresolved whether the present suit is barred under § 7421(a), the Court determines that permission of the action would not conflict with the enunciated purposes of the Anti-Injunction Act and accord with basic equitable considerations.

3. For the purpose of appeal, it is certainly characterized as final. 28 U. S. C. § 1291.

In *Bob Jones* I, the Supreme Court summarized the purpose of the Anti-Injunction Act as follows:

> The Court has interpreted the principal purpose of this language to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of *preenforcement* judicial interference, "and to require that *the legal right to the disputed sums be determined in suit for a refund.*" Enochs v. Williams Packing & Navigation Co., supra at 7, 8 L. Ed. 2d 292. See also, e.g., State Railroad Tax Cases, 92 US 575, 613-614, 23 L. Ed. 663 (1876). Cf. Cheatham v. United States, 92 US 85, 88-89, 23 L. Ed. 561 (1876). The Court has also identified "a collateral objective of the Act—protection of the collector from litigation *pending a suit for refund.*" Williams Packing, supra., at 7-8, 8 L. Ed. 2d 292, 82 S. Ct. 1125.
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> 416 U. S. 725, 736-737 [Emphasis added.]

Approving injunctive relief in the present case does not transgress the above purposes since their primary concern is to avoid judicial intervention pre-enforcement and prior to a suit for refund. Plaintiff has had the tax assessed against it, paid a refund on a part thereof, and vindicated its legal right to tax exempt status in a subsequent suit for refund. The case at bar substantially differs from *Bob Jones I* which involved plaintiff's premature, untenable attempt to attain judicial review. Maintenance of the instant action does not violate the principal purposes of § 7421(a).

Regardless of this determination that *Bob Jones I* does not preclude the present action, the Court finds the circumstances have evolved, since that earlier action, to the state that plaintiff now satisfies the one judicially established exception to § 7421(a). In this earlier suit,

the Supreme Court spelled out the following necessary elements to circumvent the Act under the exception:

> Only upon proof of the presence of two factors could the literal terms of § 7421(a) be avoided: first, irreparable injury, the essential prerequisite for injunctive relief in any case; and second, certainty of success on the merits. Id., at 6-7, 8 L. Ed. 2d 292. An injunction could issue only "if it is clear that under no circumstances could the Government ultimately prevail. . . ." Id., at 7, 8 L. Ed. 2d 292. And this determination would be made on the basis of the information available to the Government at the time of the suit. "Only if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained." Ibid.
>
> 416 U. S. 725, 737.

In *Bob Jones I*, the Supreme Court was not as much concerned with plaintiff's ability to show irreparable harm as with its inability to satisfy the second requirement. The Supreme Court expressed concern over the "especially harsh regime" imposed on § 501(c)(3) organizations threatened with the loss of their favorable tax status, but noted the matter as one Congress must decide. 416 U. S. 725, 749-750. Since that decision, plaintiff has had its § 501(c)(3) status revoked and, undeniably, suffers severe injury, even after this Court's ruling in *Bob Jones II*, because defendants have failed to reinstate its exemption or provide advance assurance of deductibility to contributors.

Plaintiff's fatal deficiency in *Bob Jones I* with respect to the Williams Packing standard, set out above, rested in the Supreme Court's assessement of plaintiff's certainty of success on the merits. "Without deciding the merits, we think that petitioner's [plaintiff's] First Amendment, due

process, and equal protection contentions are sufficiently debatable to foreclose any notion that 'under no circumstances could the Government ultimately prevail. . . .'" 416 U. S. 725, 748-749. Having reviewed the evidence presented and the legal arguments advanced by both sides, and promulgated findings of fact and conclusions of law in accordance therewith, in *Bob Jones II*, this Court determines that "under no circumstances" can the government ultimately prevail, under present tax laws, in its attempt to deny plaintiff § 501(c)(3) standing.

As a reading of the Order of this Court, dated December 26, 1978, in *Bob Jones II* reveals, the reasons for the entry of judgment on plaintiff's behalf in its refund action were numerous and substantial. In view of evidence that was before this Court at that time and not considered by the Supreme Court in *Bob Jones I*, this Court found as a fact that plaintiff is a religious organization. The proof offered in *Bob Jones II* fully substantiated this finding which can be overturned only if it is "clearly erroneous". Furthermore, application of law to the facts adduced at trial and in discovery provided two additional legal bases for plaintiff's prevailing in its refund action: the government's interpretation of § 501(c)(3) as regards plaintiff both transgressed the First Amendment and exceeded the authority granted it by Congress. Each of these just discussed determinations by the Court in *Bob Jones II* constitutes an independent basis for plaintiff's success on the merits. Although this Court can not be expected to measure the legal sufficiency of the parties' positions any differently than it did in its Order of December 26, 1978, and, so, is in an awkward position with respect to reviewing its own Order for purposes of the Williams Packing standard, the Court's singular familiarity with the facts convinces it that "under no circumstances" can the government prevail.

In sum, § 7421(a) provides no bar to plaintiff's present action. Plaintiff comes under the sole recognized exception to the Act, and the application of the Act to plaintiffs, who are successful in a refund action in district court, has yet to be decided. As to the latter question of the effect of § 7421, the Court decides that the compelling hardship borne by plaintiff warrants the issuance of injunctive remedies to effectuate this Court's Order in plaintiff's refund suit, *Bob Jones II*.

As the Fourth Circuit has pointed out, the first step for the district court, in considering an application for an interlocutory injunction, is "to balance the 'likelihood' of harm to the defendant." *Blackwelder Furniture Co. of Statesville Inc. v. Seilig Manufacturing Co., Inc.*, 550 F. 2d 189, 195 (4th Cir. 1977). Absent advance assurance of deductibility, the flow of donations to plaintiff has been seriously impaired. Not only have donations from individuals been impeded, but various non-profit foundations are prohibited from making or matching gifts to plaintiff until its tax exempt status is formally recognized by the IRS. In his affidavit in support of plaintiff's motion, Mr. Roy A. Barton, Jr., Executive Director of Financial Affairs of plaintiff, attests that he has received numerous inquiries but has been unable to assure potential donors that contributions to plaintiff are deductible. The harm suffered by plaintiff is great and immediate.

Aside from an inconsequential loss of revenue, defendants argue the harm of permitting injunctive relief in the present case, more particularly, the precedent that would be established for similar suits. However, contrary to defendants' contentions, the present action does not, as already elaborated upon, involve premature judicial interference in the government's tax system. Consequently, the likelihood of irreparable harm to plaintiff far outweighs that to defendant.

With respect to the other conditions for preliminary relief, not only does the Court discern a probability of success on the merits but has found defendants have no chance of prevailing. Likewise, public interest favors restoring the tax exempt status of an organization, such as plaintiff, that presumptively benefits the public and has successfully litigated its right to that exemption. Preliminary injunctive relief is proper.

The purpose of the issuance of an interlocutory injunction is "to maintain the *status quo ante litem*". *Blackwelder*, 550 F. 2d 195. Defendants might argue continuance of the present status quo would not entail publication of plaintiff's exemption from taxation because such was not being done at the time this suit was instituted. This analysis overlooks the fact that plaintiff has been precluded, as a matter of law, from preserving the "status quo" it now seeks. Plaintiff's action in *Bob Jones I* was to enjoin revocation of its exemption but was legally precluded by § 7421(a). After the Supreme Court's decision in *Bob Jones* I, defendants withdrew plaintiff's favorable status, resulting in the existing "status quo" of nonrecognition. Plaintiff, thus, was foreclosed from seeking injunctive relief until after the revocation of its exemption, although it has tirelessly contested defendants' action. The plaintiff's purpose in both *Bob Jones I* and *Bob Jones II* was to achieve a judicial determination of its tax status, the latter suit being necessitated to properly secure judicial review. The same fundamental issue has been in dispute in these past two, as well as the present, action. Under these circumstances, the Court agrees with plaintiff that the proper framework for determining a "status quo ante litem", as far as defendants' position on plaintiff's exempt status, is the state of affairs that existed when plaintiff undertook this unbroken string of litigation in *Bob Jones I*. A weighing of the equitable considerations involved

also results in a decision that the proper status quo, for purposes of the present motion, is that existing prior to defendants' unlawful revocation.

Defendants' final ground in opposition to plaintiff's motion and in support of their motion to dismiss is that the doctrine of sovereign immunity prohibits maintenance of the instant action. The question then becomes whether the relief sought by plaintiff, characterized by it as being in the nature of mandamus, violates the principle of sovereign immunity. The answer lies in the peculiar nature of plaintiff's action.

Although Rule 81(b) of the Federal Rules of Civil Procedure abolished the writ of mandamus, 28 U. S. C. § 1361 provides that "[t]he district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." Plaintiff herein seeks by way of mandatory injunction to compel defendants to restore, and to publish notice of the restoration of, plaintiff's tax exempt status because such performance is, in accord with this Court's decision in *Bob Jones II*, owed the plaintiff. Since plaintiff clearly meets the requirements for this special relief, the Court follows the well reasoned opinion of the Seventh Circuit in *Vishnevsky v. United States*, 581 F. 2d 1249 (7th Cir. 1978), that holds, in such instances, an action does not violate the principles of sovereign immunity.

The necessary elements for the remedy now sought by plaintiff are: (1) a clear right in the plaintiff to the relief sought; (2) a clear duty on the part of the defendant to do the act in question; and (3) no other adequate remedy available. *Burnett v. Tolson*, 474 F. 2d 877, 880 (4th Cir. 1973). This Court's decision in *Bob Jones II* establishes the first two elements, while defendants refusal to reinstate plaintiff's tax exempt status, although its

entitlement to the same has been judicially determined in a suit at law, manifests the necessity for equitable relief, the third element.

This Court determined in *Bob Jones II* that defendants' revocation of plaintiff's exemption from taxation under the IRS's interpretation of § 501(c)(3) was unlawful as well as unconstitutional. Plaintiff was adjudicated to be an exempt organization under § 501(c)(3). The tax status of plaintiff is no longer a matter of discretion or administrative judgment and its exempt status can not be actualized until defendants perform the ministerial acts presently sought by plaintiff. The failure of defendants to reinstate plaintiff's § 501(c)(3) status is illegal, thus making proper the remedy. See *Sleeth v. Dairy Product Co. of Uniontown*, 228 F. 2d 165, 168 (4th Cir. 1955), cert. denied 351 U. S. 966 (1956).

Under these circumstances, the Court judges the reasoning of the Court in *Vishnevsky*, that soveriegn immunity does not preclude the instant action, as persuasive. In *Vishnevsky*, the Seventh Circuit found, after a comprehensive review of case law, the proposition that sovereign immunity bars injunctive relief in the nature of mandamus can not be reconciled with the long line of Supreme Court cases permitting such actions and the express language of these opinions, in particular *Minnesota v. Hitchcock*, 185 U. S. 373, 386 (1902). The decision relied upon by defendants to support their position that the present suit can not be maintained without the consent of the sovereign, *Estate of Watson v. Blumenthal*, 586 F. 2d 925 (2nd Cir. 1978), is inapposite. In *Watson*, the plaintiffs, who were essentially suing the government for specific performance of a contract to redeem "flower bonds", did not show that the conduct of the defendant government officer was clearly illegal or that plaintiffs' remedy at law was inadequate. In so far as *Watson* might be read to invoke sovereign immunity where the elements for injunctive relief

in the nature of mandamus are clearly established, the Court respectfully declines to follow the reasoning, finding the rationale of *Vishnevsky* controlling as to this issue.

CONCLUSION

By the appropriate method of a refund action, plaintiff has been adjudicated as qualifying as an exempt organization under § 501(c)(3). Defendants have eviscerated the practical effect of this earlier judgment by failing to restore plaintiff's exempt status and publish notice of such status in the customary fashion. Plaintiff's remedy at law is inadequate, and plaintiff has made the full requisite showing for preliminary mandatory injunctive relief compelling defendants to perform the acts prayed for. Neither the Anti-Injunctive Act, the Declaratory Judgment Act, nor the doctrine of sovereign immunity precludes the present action.

IT IS, THEREFORE, ORDERED that defendants' motion to dismiss be, and the same is hereby, denied.

IT IS FURTHER ORDERED that plaintiff's motion for preliminary injunctive relief be, and the same is hereby granted, and that defendant W. Michael Bluementhal, Secretary of the Treasury, and defendant Jerome Kurtz, Commissioner of Internal Revenue, in their respective official capacities, restore the status of plaintiff as an organization exempt from taxation under § 501(c)(3), in accord with the Order of this Court in *Bob Jones University v. United States of America*, Civil Action No. 76-775, filed December 26, 1978, publish notice of the restoration of plaintiff's tax exempt status and advanced assurance of the deductibility of contributions to plaintiff in the next and all future Internal Revenue Bulletins and quarterly supplements to the Cumulative List of Organizations (Publication 78), and are enjoined from making such future publi-

cations unless the plaintiff is listed therein as an organization exempt from taxation under § 501(c)(3).

IT IS FURTHER ORDERED that the above preliminary injunctive decree be in effect until further order of the Court directing otherwise.

/s/ ROBERT F. CHAPMAN
Robert F. Chapman
United States District Judge

May 14, 1979

TRUE COPY
Test:

MILLER C. FOSTER, JR. CLERK
name illegible
By: Deputy Clerk
ENTERED
5-14-79

APPENDIX E

Address any reply to: P. O. Box 632, Atlanta, Georgia 30301

DEPARTMENT OF THE TREASURY
DISTRICT DIRECTOR
INTERNAL REVENUE SERVICE

Date: Apr 16 1975
In reply refer to: 730:TPS

Bob Jones University
Greenville Station
Greenville, South Carolina 29614

Gentlemen:

By letter of November 30, 1970, you were informed that the Internal Revenue Service, after careful study, had concluded that private schools with racially discriminatory admissions policies are not legally entitled to Federal tax exemption and that contributions to such schools are not deductible as charitable contributions. You were also requested to furnish evidence of a racially nondiscriminatory admissions policy.

In addition to other requirements for exemption set forth in section 501(c)(3) of the Internal Revenue Code, a private school must have a racially nondiscriminatory policy as to students within the meaning of Rev. Rul. 71-447, 1971-2 C. B. 230. In this regard, such a school must make the showing required by Rev. Proc. 72-54, 1972-2 C. B. 834 and meet the publicity requirements prescribed therein.

As you have not furnished evidence that you have a racially nondiscriminatory policy as to students and meet

the publicity requirements of Rev. Proc. 72-54, notice is hereby given of the proposed revocation of the determination letter to your organization dated March 30, 1951, recognizing your exemption as an organization described in section 501(c)(3) of the Internal Revenue Code. This notice is in accordance with Rev. Proc. 72-4, 1972-1 C. B. 706.

Your organization has the right to protest this proposed revocation by submitting a statement of facts, law and arguments in support of your position. After filing your protest, you have the right to a District conference. You may, however, waive the right to a conference in the District office and request referral of the matter directly to the National Office and request a conference there.

If you intend to file a protest, you should do so within 15 days from the date of this letter. Please give us a suggested date for the District or National Office conference, if one is desired. If you do not respond within 15 days, notice of revocation of the determination letter will be issued.

The undersigned has responsibility for your area with respect to exemption rulings and revocations for organizations described in section 501 of the Code. If you have any questions, please call at 404-526-4516. Correspondence should be sent to the address above, and should include the symbols shown in the upper right corner of this letter. A copy of the Atlanta District examination report is enclosed with this letter.

Sincerely yours,

/s/ H. E. KENWORTHY
H. E. Kenworthy
Chief, Employee Plans & Exempt
Organizations Division

Enclosure

APPENDIX F

DEPARTMENT OF THE TREASURY
DISTRICT DIRECTOR

INTERNAL REVENUE SERVICE

Date: January 19, 1976
In reply refer to: 7202:ABJ

Bob Jones University
Wade Hampton Boulevard
Greenville, South Carolina 29614

Gentlemen:

You were notified on April 16, 1975, of the proposed revocation of your exempt status under Section 501(c)(3) of the Internal Revenue Code.

This is to notify you that the proposed revocation is final and your exempt status is revoked effective December 1, 1970. You are now required to file Federal income tax returns on Form 1120 for years beginning on or after June 1, 1975. If you have any further questions, please call Artemus Jewell at 404-526-6926.

Please keep this determination letter in your permanent records.

Sincerely yours,

/s/ H. E. KENWORTHY
H. E. Kenworthy
Chief, Employee Plans and
Exempt Organizations

cc: Mr. O. Jack Taylor, Jr.

APPENDIX G

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR

Social Security or Employer Identification Number:
57-0360095

Document Locator Number:

Kind of Tax:
FUTA—Form 940

Tax Period Ended:
June 1, 1975 to December 31, 1975

Amount Claimed:
$19.13

Date Claim Received:
February 4, 1976

Person to Contact:
H. B. Sindseil

Contact Telephone Number:
765-5701

Date: May 3, 1976

Bob Jones University
Wade Hampton Boulevard
Greenville, South Carolina 29614

Gentlemen:

CERTIFIED MAIL

We are sorry, but we cannot allow the above claim for an adjustment of your tax, for the reasons stated below. Our decision is based on provisions of the internal revenue laws and regulations. This letter is your legal notice that your claim is fully disallowed.

If you wish to bring suit or proceedings for the recovery of any tax, penalties, or other moneys for which this disallowance notice is issued, you may do so by filing such a suit with the United States District Court having jurisdiction, or the United States Court of Claims, 717 Madison Place NW., Washington, D. C. 20005. The law permits you to do this within 2 years from the mailing date of this letter. Suit may not be filed in the United States Tax Court.

If you have any questions, please contact the person named above.

Sincerely yours,

/s/ H. B. BINDSEIL
District Director

Reasons for disallowance:
Claim not allowable.

cc: Mr. Wesley M. Walker, Attorney
Mr. O. Jack Taylor, Jr., Attorney

901 Sumter St., Columbia, S. C. 29201

Form L-60 (Rev. 3-74)

APPENDIX H

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

C. A. No. 76-775

Bob Jones University,

Plaintiff,

v.

United States of America,

Defendant.

Order

This matter is before the Court on the Defendant's Motion to Dismiss for want of subject matter jurisdiction. This is an action for refund of federal unemployment taxes (FUTA) paid by the Plaintiff with respect to one employee of the Plaintiff for the period June 1, 1975, through December 31, 1975. The Defendant contends that said FUTA taxes must be paid for a full calendar year in order for the Court to have jurisdiction of this refund action. The Plaintiff contends that it may pay the taxes for the

short period June 1, 1975, through December 31, 1975, and litigate its entitlement to exempt status for that period through the refund procedure.

At an informal conference attended by counsel for the parties, Plaintiff's counsel indicated their willingness to pay the FUTA tax on the one employee for the entire calendar year 1975, and file an amended FUTA tax return for that period, but would do so only with the understanding that Plaintiff would not waive any of its rights, particularly any right to rely upon the revocation letter dated January 19, 1976, from the Internal Revenue Service to the University. The Court understands that the Defendant is agreeable to such amendment.

THEREFORE, IT IS ORDERED:

1) That the Plaintiff file its amended FUTA tax return for the calendar year 1975, and pay the tax due therein for the one employee, and that by doing so the Plaintiff does not waive and retains any and all rights it may now have and, in particular, the right to rely upon the revocation letter dated January 19, 1976.

2) The Defendant will promptly, within five (5) days of the filing of such amended FUTA tax return and claim for refund, deny said claim for refund in the same manner and upon the same grounds as the University's prior claim for refund was denied by letter dated May 3, 1976.

3) The Plaintiff is granted leave to amend its Complaint so as to allege the filing of said amended FUTA tax return and denial of claim for refund.

4) The Defendant is granted ten (10) days to answer the Amended Complaint filed by the Plaintiff.

AND IT IS SO ORDERED.

/s/ ROBERT F. CHAPMAN

Robert F. Chapman, Judge
United States District Court

May 23, 1977.

WE CONSENT:

/s/ O. JACK TAYLOR, JR.
Wesley M. Walker
J. D. Todd, Jr.
O. Jack Taylor, Jr.

Counsel for the Plaintiff

/s/ J. D. MCCOY, JR.
J. D. McCoy, Jr.
Assistant U. S. Attorney

Counsel for the Defendant

APPENDIX I

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action No. 76-775

Bob Jones University,

Plaintiff,

v.

The United States of America,

Defendant.

Order

[Filed March 2, 1979]

Subsequent to the filing of this Court's Order in December 1978 the defendant has asked for a ruling as to the production and admission of a letter written May 29, 1975 from Dr. Bob Jones, III, President of Bob Jones University to O. Jack Taylor, Jr. of the firm of Leatherwood, Walker, Todd and Mann, attorneys for Bob Jones University. The production and admission of this letter were objected to at the time of trial upon the basis that it was protected by attorney-client privilege. The Court read the letter prior to making its findings of fact and conclusions of law and finds that the same is protected by the attorney-client privilege. No mention of this letter was made in the final Order of the Court, and the purpose of this Order is to make a definitive ruling on the May 29, 1975 letter.

IT IS, THEREFORE, ORDERED that the letter of May 29, 1975 from Bob Jones, III to O. Jack Taylor, Jr. is protected by attorney-client privilege and need not be produced to the attorney for the United States of America. Since the United States has indicated its intention of appealing the prior findings and Order of this Court and since the letter of May 29, 1975 may be of some use to the appellate court, a copy of the same is being attached to this Order in a sealed envelope to be opened only by the Judges of the United States Court of Appeals for the Fourth Circuit who may be selected on the panel to hear the appeal in this case.

AND IT IS SO ORDERED.

/s/ ROBERT F. CHAPMAN
Robert F. Chapman
United States District Judge

February 28, 1979
Columbia, South Carolina

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1293

BOB JONES UNIVERSITY,
Plaintiff-Appellee

v.

W. MICHAEL BLUMENTHAL, SECRETARY OF THE TREASURY AND JEROME KURTZ, COMMISSIONER OF INTERNAL REVENUE,
Defendant-Appellants

C/A 79-163

Order Staying Injunctive Order

It is hereby ordered that the order of the United States District Court for the District of South Carolina issued on May 14th, 1979 in the above entitled case, directing the Secretary of the Treasury and the Commissioner of Internal Revenue Service, "in their respective official capacities, restore the status of plaintiff as an organization exempt from taxation under Section 501(c)(3), in accord with the Order of this Court in *Bob Jones University v. United States of America*, Civil Action No. 76-775, filed December 26, 1978, publish notice of the restoration of plaintiff's exempt status and advance assurance of the deductibility of contributions to plaintiff in the next and all future Internal Revenue Bulletins and quarterly supple-

ments to the Cumulative List of Organizations (Publication 78) and are enjoined from making such future publications unless the plaintiff is listed therein as an organization exempt from taxation under Section 501(c)(3)", be stayed until this matter can be heard by the United States Court of Appeals for the Fourth Circuit.

name illegible
Senior United States Circuit Judge

May 15th, 1979
Alexandria, Virginia

APPENDIX K

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1293

Bob Jones University,
Appellee,

v.

W. Michael Blumenthal, Secretary of the Treasury, and Jerome Kurtz, Commissioner of Internal Revenue,
Appellants.

Order on Motion to Vacate Order
(Filed June 6, 1979)

Upon consideration of Bob Jones University's motion to vacate the order of a single judge of this court entered May 15, 1979, staying an injunction of the district court entered May 14, 1979; the motion of the government to continue the stay; the briefs, record, and argument of counsel;

With the concurrence of Judge Bryan, Judge Butzner, and Judge Dumbauld, it is ORDERED that the motion to vacate the stay is denied, and the stay is continued pending appeal.

For the court by direction

/s/ WILLIAM K. SLATE, II
Clerk

APPENDIX L

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1215

Bob Jones University,
Appellee,

v.

United States of America,
Appellant.

No. 79-1216

Bob Jones University,
Appellee,

v.

United States of America,
Appellant.

No. 79-1293

Bob Jones University,
Appellee,

v.

W. Michael Blumenthal, Secretary of the Treasury and Jerome Kurtz, Commissioner of Internal Revenue,
Appellants.

Order

(Filed April 8, 1981)

Upon consideration of the petition for rehearing and suggestion for rehearing en banc and, a request for a poll on the suggestion for rehearing en banc having been made, but the poll failed for a lack of majority support,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Hall, with the concurrence of Judge Merhige, USDJ. Judge Widener dissents to the denial of rehearing en banc as well as denial by the panel.

For the Court,

/s/ WILLIAM K. SLATE, II
Clerk

Joint Appendix

FILED
NOV 27 1981

No. 81-3

IN THE

Supreme Court of the United States

October Term, 1981

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX

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Counsel for Respondent

PETITION FOR CERTIORARI FILED JULY 2, 1981
CERTIORARI GRANTED OCTOBER 13, 1981

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The Opinions and Judgments below appear as appendices to the Petition for Certiorari.

DOCKET ENTRIES

• • •

United States District Court, District of South Carolina, Greenville Division

C. A. 76-775—Bob Jones University vs. U.S.A.

Date	*Proceedings*
5- 4-76	Complaint and Summons 3 c. U. S. M.
	• • •
7- 9-76	Answer of deft. with C of S.
	• • •
4-15-77	Motion By the Def. to dismiss w/memorandum supporting its motion and w/cert. of service.
	• • •
5- 2-77	Memorandum (Received) by pltf. in opposition to deft. motion to dismiss complaint
5-11-77	Reply Memorandum (Received) by def. in support of motion to dismiss
	• • •
5-27-77	Amended Complaint by the pltf. w/cert. of service.
6- 9-77	Answer to Amended Complaint & Counterclaim by the def. w/cert. of service
6-29-77	Motion By pltf. to dismiss counterclaim or in the alternative to sever the issues.
	• • •

Date	*Proceedings*
10- 6-77	Order (RFC) denying plaintiff's Motion to dismiss Government's counter-claim, and granting plaintiff's motion to sever. (cc to counsel)
	• • •
5-10-78	Non Jury Trial (RFC/js) witnesses & exhibits —taken under advisement. Briefs to be submitted by 7/15/78. Reply 8/15/78 7-7-78 Deft. exh. 12A received DC. 111A (Rev. 1/75)
7-26-78	Transcript of non-jury trial (5-10-78)
	• • •
12-26-78	Findings of Fact, Conclusions of Law and Order (RFC) that pltf. was entitled to exemption for calendar year 1975; that pltf. have judgment against deft. for amt. of $21.00 representing refund of F. U. T. A. tax previously paid. (mld) (eod 12-26-78)
12-27-78	Judgment Entered that pltf. Bob Jones Univ. recover of the deft. USA sum of $21.00 which represents refund of FUTA tax previously paid; and that action is dismissed. (mld) (eod 12-27-78)
1-11-79	Order (RFC) dismissing defendant's counterclaim, based on the Order of this Court filed December 26, 1978. (MLD)

DOCKET ENTRIES

United States District Court, District of South Carolina, Greenville Division

C. A. 79-163—Bob Jones University -vs- W. Michael Blumenthal, et al.

Date	*Proceedings*
1-24-79	Summons & Complaint 8 c. U. S. M. for service.
1-24-79	Notice & Motion for Preliminary Relief (ref (ref. 5-14-79).
	• • •
2- 6-79	Motion by defts. to dismiss with cert. of service (ref. 5-14-79).
	• • •
4-16-79	Hearing (RFC/js) Pltf's Motion for Prelim. Relief (1-24-79) taken under advisement. Pltf's Exhibit 1 into evid. *Deft's oral motion to stay proceedings in event ct. rules against gov.—Granted.*
	• • •
5-14-79	Order (RFC) defts' Motion to dismiss is denied; pltf's Motion for prelim. injunc. relief is granted, defts. Bluementhal & Krutz in official capacities, restore status of pltf. as an organization exempt from taxation in accord w/Order in C/A 76-775 filed 12-26-78, publish notice of restoration, etc. in next & all future IR Bulletins, etc. & enjoined from making future publica. unless pltf. is listed as tax exempted; prelim. injunc. in effect until further order of court. (MLD) (EOD 5-14-79).

Date	*Proceedings*
5-15-79	Notice of Appeal by defts. CC's to counsel, court report and 4CCA.
5-15-79	Motion by defts. for stay of enforcement of Court Order granting injunctive relief. w/c of
5-15-79	Memorandum (Received) supporting defts.' motion for stay.

• • •

5-21-79	Order (Certified Copy) of 4CCA staying injunctive order filed in District Court 5-14-79. MLD.

• • •

DOCKET ENTRIES
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Appeal from United States District Court for the District of South Carolina, at Greenville.

Case No. 791215

Cons. LR 19 79-1216. NOTE: Although not consolidated with 79-1293 because of briefing schedules, should be looked at for consolidating for argument.

Bob Jones University,

Appellee,

v.

United States of America,

Appellant.

7-2-79
J. D. Todd
O. Jack Taylor
Wesley M. Walker (Call)
P.O. Box 2248
Greenville, SC 29602
803-242-6440

Attorneys for Appellee

4/11/79
John F. Murray (I)
Asst. Attorney General
Gilbert E. Andrews
Chief Counsel, Appellate Section
Tax Div., Dept. of Justice
Washington, D. C. 20530
202-633-3361

6/1/79
Gilbert E. Andrews
Leonard J. Henzke, Jr.
Attys., Tax Division
Dept. of Justice
Washington, D. C. 20530
202-633-3361 633-2987

Attorneys for Appellant

No. Below: C/A 76-775

Judge Below: Robert F. Chapman

Date of Judgment: February 27, 1979

Notice of Appeal Filed: March 13, 1979

GENERAL DOCKET

Date	*Proceedings*
4- 2-79	Record in one volume (Vol. I), filed and appeal docketed.
4- 2-79	Transcript in one volume (Vol. V), filed.
4- 2-79	Exhibits in one volume (Vol. VI), filed.
4- 2-79	Depositions in one volume (Vol. IV), filed.
4- 2-79	Plaintiff's Answers to Interrogatory No. 22 in one volume (Vol. II).
4- 2-79	Plaintiff's request for admissions in one volume (Vol. III), filed.
4- 3-79	Order consolidating LR 19 (79-1215 & 79-1216) and establishing a briefing schedule filed. Copies mailed. Appellant's brief due 5/14/79.
4-11-79	Appellant's designation of items for inclusion in the record appendix, filed.
5- 9-79	Motion (A-50) for correction of the record on appeal to include "motion exhibit A" as a supplement to the record, filed. Motion granted.
5- 9-79	Motion (A-58) of appellant for extension of time to file opening brief to May 24, 1979, filed. Motion granted.
5- 9-79	Supplement to record on appeal to add "motion exhibit A" which is the admissions policy adopted on May 29, 1975 by the Bob Jones University, filed.
5-25-79	Twenty-Five (25) copies of the appellant's brief filed 5/24/79
5-25-79	Ten (10) copies of the appendix filed 5/24/79 PM/rba. Vol. I & II.

6-26-79 Twenty-Five (25) copies of the appellee's brief filed

6-26-79 Negative Local Rule 17 (Bob Jones) filed.

7-11-79 Twenty-Five (25) copies of the appellant's reply brief filed 7/9/79

8-27-79 Petition for Hearing (D-207) en banc of appellee and motion to consolidate appeals, filed. Transmitted to CFH, w/copy to all circuit judges.

10-25-79 Order consolidating case nos. 79-1215, 79-1216, 79-1293, for briefing and oral argument, and denying the suggestion of initial en banc hearing, filed. Copy to Todd-Taylor-Walker; Lydon-McCoy; Ferguson-Andrews-Henzke; McKnew.

12-17-79 Motion (H-137) to continue oral argument and motion for permission to file supplemental brf, filed.

1- 2-80 Motion (I-15) of A for leave to file response of the taxpayer's motion to continue oral argument out of time, filed. Motion granted.

1- 2-80 Response to Taxpayer's motion for continuance of oral argument, filed.

1- 8-80 Order granting the motion to continue a case for argument at the March session; and granting the taxpayer's request for additional briefing, filed.

1-17-80 Twenty-five (25) copies of the supplemental brief of Bob Jones Univ. filed.

2-11-80 Twenty-five (25) copies of the appellee's supplemental brief filed.

3- 3-80 Cause argued before Judge Widener, Judge Hall, circuit Judges and Judge Merhige District Judge and submitted.

12-30-80 Opinion filed. KKH (HEW dissenting).

12-30-80 Opinion and notice of judgment mailed to appellant, council of record and clerk of the district court at Greenville, South Carolina. Judgment of the district court reversed and remanded with instructions.

1-12-81 Petition for Rehearing (V-71) and suggestion of rehearing en banc of appellee, filed Transmitted to HEW, KKH, RRMerhige w/copy to entire court on 1/14/81.

1-19-81 Order correcting opinion filed 12/30/80, filed. Copies to McKnew-Todd-Taylor-Walker; Lydon-McCoy; Ferguson-Andrews-Henzke.

2- 4-81 Response-A to Es' petition for rehearing, filed.

2- 9-81 Submitted to HEW, KKH, MERHIGE, DJ, response to pet. for reh. w/copy to entire ct.

4- 8-81 Order denying petition for rehearing and suggestion for rehearing en banc, filed. Copy to Murray-Andrews-Henz; Lydon-McCoy; Walker-Todd-McKnew-Taylor. Also copy to Judge Merhige.

4-15-81 Certified copy of the judgment and printed copy of the opinion transmitted to the Clerk of the District Court at Columbia.

4-15-81 Record on appeal in one volume, transcript in one volume, exhibits in one volume, depositions in one volume, plaintiff's answers to interrogatory No. 22 in one volume and plaintiff's request for admission in one volume returned to the Clerk of the District Court at Columbia, SC.

4-15-81 Motion (Y-136) of E for stay of mandate filed.

Date	*Filings—Proceedings*
4-15-81	Order granting E's motion for stay of mandate filed. Copies to McKnew-Todd-Walker-Taylor; Lydon-McCoy; Henzke-Murray-Andrews.
5-14-81	Motion (Z-103) of E for extension of stay of mandate filed.
5-14-81	Order staying mandate for additional 30 days to and including 6/15/81 filed. Copies to Ball, Lydon/McCoy, Henzke/Murray/Andrews, Todd/Taylor/Walker.
6-12-81	Motion (A-80) E for extension of stay of mandate filed.
6-22-81	Order staying mandate for additional 30 days to and including 7/15/81 filed. Copies to Ball; Todd/Taylor/Walker; Murray/Andrews/Henzke; Lydon/McCoy.
7- 1-81	Notice evidencing the filing petition for writ of certiorari in the Supreme Court July 1, 1981 filed. (No. 81-3)

DOCKET ENTRIES
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Appeal from the United States District Court for the District of South Carolina, at Greenville.

Case No. 791216

Cons. LR 19 79-1215.

Bob Jones University,

Appellee,

v.

United States of America,

Appellant.

7-2-79
J. D. Todd (Call)
O. Jack Taylor
Wesley M. Walker (Call)
P. O. Box 2248
Greenville, SC 29602
803-343-6440

Attorneys for Appellee

7-2-79
Thomas E. Lydon, Jr., USA
James D. McCoy, III, AUSA
United States Courthouse
Columbia, SC 29201

Attorneys for Appellant

No. Below: C/A 76-775

Judge Below: Robert F. Chapman

Date of Judgment: 12/26/78; 1/11/79; 12/27/79.

Notice of Appeal Filed: 2-16-79 (amended: 2-27-79).

Appeal from the United States District Court for the District of Maryland, at Baltimore. Alexander Harvey, II, District Judge.

Argued August 25, 1980 Decided January 23, 1981

Before HAYNSWORTH, Chief Judge; WINTER and MURNAGHAN, Circuit Judges.

Paul D. Bekman (William H. Engelman, Harriett E. Cooperman, Kaplan, Heyman, Greenberg, Engelman & Belgrad, P. A. on brief) for Appellant in 79-1540; (James W. Bartlett, III, Francis J. Gorman, David R. Owen, Semmes, Bowen & Semmes on brief) for Appellant in 79-1541; George J. Koelzer (Thomas D. Monte, Jr., George Beall; Evans, Koelzer, Marriott, Osborne & Kreizman; Miles & Stockbridge on brief) for Appellee.

4- 2-79 Record in 79-1216 incorporated by reference to 79-1215.

4- 2-79 Order consolidating LR 19 (79-1215 & 79-1216) and establishing a briefing schedule, filed. Copies mailed. Appellant's brief due 5/14/79.

4-11-79 Appellant's designation of items for inclusion in record appendix, filed.

Date	*Filings—Proceedings*
5- 9-79	Motion (A-50) for correction of the record on appeal to include "motion exhibit A" as a supplement to the record, filed. Motion Granted.
5- 9-79	Motion (A-58) of appellant for extension of time to file opening brief to May 24, 1979, filed. Motion Granted.
5 -9-79	Supplement to record on appeal to add "motion exhibit A" which is the admissions policy adopted on May 29, 1975 by the Bob Jones University, filed.
5-25-79	Twenty-Five (25) copies of the appellant's brief filed 5/24/79
5-25-79	Ten (10) copies of the appendix filed 5/24/79 Vol. I & II
6-26-79	Twenty-Five (25) copies of the appellee's brief filed
6-26-79	Negative Local Rule 17 (Bob Jones) filed.
7-11-79	Twenty-Five (25) copies of the appellants' reply brief filed 7/9/79
8-27-79	Petition for Hearing (D-207) en banc of appellee and motion to consolidate appeals, filed. Transmitted to AVB, JDB & JDM.
10-25-79	Order consolidating case nos. 79-1215, 79-1216, 79-1293, for briefing and oral argument, and denying the suggestion of initial en banc hearing, filed. Copy to Todd-Taylor-Walker; Lydon-McCoy; Ferguson-Andrews-Henzke; McKnew.
12-17-79	Motion (H-137) to continue oral argument and motion for permission to file supplemental brf., filed.

1- 2-80 Motion (H-137) of A for leave to file response of the taxpayer's motion to continue oral argument out of time, filed. Motion Granted.

1- 2-80 Response to Taxpayer's motion for continuance of oral argument, filed.

1- 8-80 Order granting the motion to continue a case for argument at the March session; and granting the taxpayer's request for additional briefing, filed.

1-17-80 Twenty-five (25) copies of the supplemental brief of Bob Jones Univ. filed.

2-11-80 Twenty-five (25) copies of the appellee's supplemental brief filed.

3- 3-80 Cause argued before Judge Widener, Judge Hall Circuit Judges and Judge Merhige District Court Judge and Submitted.

12-30-80 Opinion filed. KKH (HEW dissenting).

12-30-80 Opinion and notice of judgment mailed to appellant, counsel of record and the clerk of the district court at Greenville, South Carolina.

12-30-80 Judgment of the district court reversed and remanded with instructions.

1-12-81 Petition for Rehearing (V-71) and suggestion of rehearing en banc of appellee, filed. Transmitted to HEW, KKH, RRMerhige w/copy to entire court on 1/14/81.

1-19-81 Order correcting opinion filed 12/30/80, filed. Copies to McKnew-Todd-Taylor-Walker; Lydon-McCoy; Ferguson-Andrews-Henzke.

2- 4-81 Response-A to Es' petition for rehearing, filed.

Date	*Filings—Proceedings*
2- 9-81	Submitted to HEW, KKH, Merhige, DJ, response to pet, for reh. w/copy to entire ct.
4- 8-81	Order denying petition for rehearing and suggestion for rehearing en banc, filed. Copy to Murray-Andrews-Henz; Lydon-McCoy; Walker-Todd-McKnew-Taylor. Also copy to Judge Merhige.
4-15-81	Docket entry for return of mandate and record in detail in 79-1215
4-15-81	Motion (Y-136) of E for stay of mandate filed.
4-15-81	Order granting E's motion for stay of mandate filed. Copies to McKnew-Todd-Walker-Taylor; Lydon-McCoy; Henzke-Murray-Andrews.
5-14-81	Motion (Z-103) of E for extension of stay of mandate filed.
5-14-81	Order staying mandate for additional 30 days to and including 6/15/81 filed. Copies to Ball, Lydon/McCoy, Henzke/Murray/Andrews, Todd/Taylor/Walker.
6-12-81	Motion (A-80) of E for extension of stay of mandate filed.
6-22-81	Order staying mandate for additional 30 days to and including 7/15/81 filed. Copies to Ball; Todd/Taylor/Walker; Murray/Andrews/Henzke; Lydon/McCoy.
7-10-81	Notice evidencing the filing petition for writ of certiorari in the Supreme Court July 1, 1981 filed. (No. 81-3)

DOCKET ENTRIES

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Appeal From the United States District Court for the District of South Carolina, at Greenville

Case No. 791293 Civil

Note: Although not consolidated with below because of briefing schedules, 79-1215, 79-1216 should be considered for consolidation for argument.

Bob Jones University,

Appellee,

v.

W. Michael Blumenthal, Secretary of the Treasury and Jerome Kurtz, Commissioner of Internal Revenue,

Appellants.

Wesley M. Walker 5/25/79
J. D. Todd, Jr.
Natalma M. McKnew
O. Jack Taylor, Jr.
LEATHERWOOD, WALKER, TODD & MANN
217 East Coffee St.
P. O. Box 2248
Greenville, SC 29602
(803-242-6440)

Attorneys for Appellee

6-11-79
Thomas E. Lydon, Jr., Esq.
U. S. Attorney
P. O. Box 12107
Columbia, SC 29211

Attorneys for Appellant

No. below: 79-163

Judge below: Robert F. Chapman

Date of Judgment: May 14, 1979

Notice of appeal filed: May 15, 1979

Date	*Filings—Proceedings*
5-17-79	Case docketed prior to receipt of record for purpose of consideration of Rule 8 motion.
5-17-79	(A-116) Appellants' motion for stay of injunctive order filed in Judge Bryan's office on May 15, 1979, filed.
5-17-79	Memorandum in support of motion for stay, filed.
5-17-79	Order staying injunctive order entered by Judge Bryan on May 15, 1979, filed.
5-21-79	Record on appeal in one volume (Vol. I) and transcript of motions in one volume (Vol. II) filed.
5-21-79	Briefing schedule established. Appellant's brief due 7-2-79.

5-23-79 Motion of appellee to vacate stay and for hearing by a panel of the court filed. Referred to AVB, JDB, Judge Dumbauld. (A-158)

5-31-79 Motion of appellants for continuation of stay and for denial of motion to vacate; memorandum in support thereof; affidavits of S. Shapiro and C. Powell; appendices (including appendix in two volumes filed in 79-1215/1216); and certificate of service, filed. Referred to JDB (Copies mailed by counsel to AVB; Dumbauld).

6- 6-79 Argument heard before Senior Judge Bryan, Judge Butzner circuit Judges, Judge Dumbauld, on stay question (merits not argued at this time).

6- 6-79 Order denying appellee's motion to vacate stay, filed.

7-10-79 Twenty-five (25) copies of the appellant's brief filed. CS 6-29-wc

7-10-79 Ten (10) copies of the joint appendix filed.

7-25-79 Twenty-five (25) copies of the appellee's brief filed.

8- 1-79 Motion (D-4) of As for extension of time to file reply brief, filed.

8- 2-79 Order extending time to file As' reply brief to 8/20/79, filed. Copy to Walker-Todd-McKnew-Taylor; Lydon; Ferguson-Andrews-Henzke.

8-27-79 Petition for Hearing (D-207) en banc of appellee and motion to consolidate appeals, filed. Transmitted to AVB, JDB & JDM.

9-13-79 Local Rule 17 disclosure (Bob Jones Univ.) negative filed -11-79.

10-25-79 Order consolidating case nos. 79-1215, 79-1216, 79-1293, for briefing and oral argument, and denying the suggestion of initial en banc hearing, filed. Copy to Todd-Taylor-Walker; Lydon-McCoy; Ferguson-Andrews-Henzke; McKnew.

12-17-79 Motion (H-137) to continue oral argument and motion for permission to file supplemental brf., filed.

1- 2-80 Motion (H-137) of A for leave to file response of the taxpayer's motion to continue oral argument out of time, filed. MOTION GRANTED.

1- 2-80 Response to Taxpayer's motion for continuance of oral argument, filed.

1- 8-80 Order granting the motion to continue a case for argument at the March session; and granting the taxpayer's request for additional briefing, filed.

1-17-80 Twenty-five (25) copies of the supplemental brief of Bob Jones Univ. filed.

2-11-80 Twenty-five (25) copies of appellee's supplemental brief filed.

3- 3-80 Cause argued before Judge Widener, Judge Hall, circuit Judges and Judge Merhige, district Judge and submitted.

12-30-80 Opinion filed. KKH (HEW dissenting)

12-30-80 Opinion and notice of judgment mailed to appellant, counsel of record and the clerk of the district court at Greenville, South Carolina.

12-30-80 Judgement of the district court reversed and remanded with instructions.

Date	*Filings—Proceedings*
1-12-81	Petition for Rehearing (V-71) and suggestion of rehearing en banc of appellee, filed. Transmitted to HEW, KKH, RRMerhige w/copy to entire court on 1/14/81.
1-19-81	Order correcting opinion filed 12/30/80, filed. Copies to McKnew-Todd-Taylor-Walker; Lydon-McCoy; Ferguson-Andrews-Henzke.
2- 4-81	Response-A to Es' petition for rehearing, filed.
2- 9-81	Submitted to HEW, KKH, Merhige, DJ, response to pet. for reh. w/copy to entire ct.
4- 8-81	Order denying petition for rehearing and suggestion for rehearing en banc, filed. Copy to Murray-Andrews-Henz; Lydon-McCoy; Walker-Todd-McKnew-Taylor. Also copy to Judge Merhige.
4-15-81	Certified copy of the judgment and printed copy of the opinion transmitted to the Clerk of the District Court at Columbia, SC.
4-15-81	Record on appeal in one volume and transcript returned to the Clerk of District Court at Columbia, SC.
4-15-81	Motion (Y-136) of E for stay of mandate filed.
4-15-81	Order granting E's motion for stay of mandate filed. Copies to McKnew-Todd-Walker-Taylor; Lydon-McCoy; Henzke-Murray, Andrews.
7-10-81	Notice evidencing the filing petition for writ of certiorari in the Supreme Court July 1, 1981 filed. (No. 81-3)

AO-137

Bob Jones University

vs.

United States of America

Cause No. C/76-775

PLAINTIFF'S EXHIBITS

	Date	Identification No.	Witness	Description	
Taylor	5-10-78	1	Jones	Booklet "Is Segregation Scriptural"	received
"	"	2	"	Copy of Certificate of Incorporation State S. C.	"
"	"	3	"	(3) Application Form	"
"	"	4	"	Minutes—May 27, 1975	"
"	"	5	"	Rules—(Dean of Women)	"
"	"	6	"	Rules (Dean of Men)	"
"	"	7	"	Bob Jones Univ. Student Handbook	"
"	"	8	"	IBM Student Signature Card	"
"	"	9	"	letter, dated 1-19-76	"
"	"	10	"	letter, " 5-3-76	"

DEFENDANT'S EXHIBITS

	Date	Identification No.	Witness	Description	
Whitaker	5-10-78	1	Jones	Revised & Amended By-Laws BJU	received
"	"	2	"	letter, 6-2-75 to IRS	"
"	"	3	"	BJU Bulletin/Catalog issue	"
"	"	4	"	Article "Can Two Walk Together Except They Agree"	"
"	"	5	"	letter, Sept. 10, 1971	"
"	"	6	"	Package Containing Press release etc.	"
"	"	7	"	letter, Dec. 9, 1970	"
"	"	8	"	Composite of Various Minute	"
"	"	9	"	Letters on BJU Stationary Dean of Men & Dean of Women	"
"	"	10	"	Letter on BJU Stationary Dean of Men & Dean of Woman	"
"	"	11	"	Pamphlet "Why"	"
"	7-6-78	12A	"	letter from Dept of Justice w/attached explanation	

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

CIVIL No. 76-775

BOB JONES UNIVERSITY,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

DEFENDANT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION

[Filed July 19, 1976]

• • •

19. Identify the various religious denominations represented in the student body of the classes maintained by the plaintiff, identifying, if possible, the particular convention, synod or other subdivision of the denominations involved and the percentage of students attending from that denomination or subdivision.

• • •

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CIVIL ACTION NO. 76-775

BOB JONES UNIVERSITY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION

[Filed August 13, 1976]

* * *

19. Identify the various religious denominations represented in the student body of the classes maintained by the plaintiff, identifying, if possible, the particular convention, synod or other subdivision of the denominations involved and the percentage of students attending from that denomination or subdivision.

Independent Baptist	36.7
General Association of Regular Baptists	8.7
Non-Denominational	8.7

Conservative Baptist Association	7.5
Independent Fundamental Churches of America	7.3
Southern Baptist Convention	5.7
Baptist Bible Fellowship	5.1
American Baptist Convention	2.0
Grace Brethren	1.6
United Methodist	1.2
Christian and Missionary Alliance	1.2
Bible Presbyterian	1.0
Missionary Baptist	Less than 1%
Southern Presbyterian	"
Free Will Baptist	"
Baptist General Conference	"
Fundamental Baptist	"
Berean Fellowship	"
Plymouth Brethren	"
Christian	"
United Presbyterian	"
Independent Methodist	"
Southern Methodist	"
Assemblies of God	"
United Baptist	"
Evangelical Free Church	"
Orthodox Presbyterian	"
Evangelical Covenant	"
Wesleyan	"
Bible Protestant	"
Baptist Church of Canada	"
Church of God (Anderson)	"
North American Baptist Association	"
American Lutheran	"
Church of Christ	"
Congregational	"

[Page 20.]

General Baptist	Less than 1%
Nazarene	"
Associated Gospel Churches	"
Bible Fellowship Church	"
Fellowship Baptist	"
Lutheran	"
World Baptist Fellowship	"
Associated Gospel Church of Canada	"
Congregational Christian	"
Evangelical Mennonite	"
Landmark Baptist	"
Pentecostal	"
Reformed Presbyterian	"
Associated Reformed Presbyterian	"
Church of Christian Liberty	"
Church of God (Lee)	"
Cumberland Presbyterian	"
Episcopal	"
Evangelical Congregational	"
Evangelical Fellowship	"
Evangelical Methodist	"
Foursquare Gospel	"
Pentecostal Holiness	"
Reformed Episcopal	"
American Baptist Association	"
Anglican Orthodox	"
Baptist Church of Korea	"
Baptist Church of Puerto Rico	"
Christian Union	"
Church of God (Pennsylvania)	"
Churches of God of North America	"
Congregational Methodist	"
Evangelical Church	"

[page 21.]

Evangelical Lutheran	Less than 1%
Free Congregational	"
Independent Episcopal	"
Lutheran (Wisconsin Synod)	"
Mennonite	"
Mennonite Brethren	"
Pilgrim Holiness	"
Primitive Methodist	"
Society of Friends	"
United Church of Christ	"
Ukranian Evangelical Baptist	"
Advent Christian	"
Apostolic Christian	"
Baptist Church of Venezuela	"
Baptist Missionary Association of America	"
Bible Church of Iran	"
Bible Church of West Africa	"
Bible Methodist	"
Christian Reformed	"
Church of England	"
Evangelical Church of India	"
Evangelical Church of Lebanon	"
Free Methodist	"
Holiness Church of Formosa	"
Hungarian Baptist	"
Independent Christian	"
Independent Church of Australia	"
Independent Presbyterian	"
Independent Reformed Church	"
Korean Presbyterian	"
Lutheran (Missouri Synod)	"
Mexican Baptist Church	"

[page 22.]

Moravian Church	Less than 1%
Primitive Baptist	"
Reformed	"
Salvation Army	"
United Baptist Church of Canada	"

[page 23.]

• • •

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action No. 76-775

Bob Jones University,

Plaintiff,

v.

United States of America,

Defendant.

PLAINTIFF'S SECOND INTERROGATORIES TO DEFENDANT

[Filed August 9, 1976]

The Plaintiff, pursuant to the Federal Rules of Civil Procedure propounds the following interrogatories to the Defendant.

The Definitions, Instructions and Admonition set forth in Plaintiff's First Interrogatories to Defendant apply to Plaintiff's Second Interrogatories to Defendant.

57. Relative to the exempt status of the University define:

(a) race

(b) religion

(c) admissions policy

(d) religious belief

58. List all races as defined in the answer to the preceding interrogatory.

• • •

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil No. 76-775

BOB JONES UNIVERSITY,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

DEFENDANT'S ANSWERS AND OBJECTIONS TO PLAINTIFF'S SECOND INTERROGATORIES

[Filed September 13, 1976]

The defendant responds to plaintiff's interrogatories, served August 6, 1976, as follows:

57. (a) The American Heritage Dictionary of the English Language (1969 ed.) contains an adequate definition of race, for purposes of the present case, as follows: "a local or global human population distinguished as a more or less distinct group by genetically transmitted physical characteristics."

(b) The American Heritage Dictionary of the English Language (1969 ed.) contains an adequate definition of religion, for purposes of this case, as follows: "The expression of man's belief in and reverence for a superhuman power recognized as the creator and governor of

the universe." The defendant does not contend that this definition is an all-inclusive definition which would apply equally in all contexts. See, for example, the decision in *United States v. Seeger*, 380 U. S. 163 (1965). However, the defendant's understanding is that the plaintiff alleges that its policies and practices are based upon its biblical interpretation of God's commandments. (See plaintiff's response to defendant's Interrogatory No. 10.) Hence, the definition would be adequate in the context of this case.

(c) As the defendant understands the term "admissions policy" in the context of this case, it is the various rules and conditions applied by the plaintiff in determining which students it will accept and, further, is the various rules and conditions which the students are required to accept upon admission in order to receive and continue their status as students.

(d) In the context of this case, a religious belief is a belief arising from and relating to one's practice of his religion.

58. As pertinent to this case, the Negro race and the caucasian race are the important races. The defendant does not presently understand that other races are relevant to this case, and, therefore, objects to further answering this interrogatory.

• • •

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action No. 76-775

BOB JONES UNIVERSITY,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

PLAINTIFF'S ANSWERS TO DEFENDANT'S INTERROGATORIES AND RESPONSES TO REQUESTS FOR PRODUCTION

[Filed August 13, 1976]

• • •

9. Has the plaintiff ever differentiated among the races for purposes of determining whom it would accept for admission to sudy? (Please include all differentiation whether it be unconditioned exclusion of one or more races, conditional admission of one or more races on conditions not applicable to all races or any other differentiation.) If this question is answered in the affirmative, state the precise nature of the differentiation that the plaintiff made and identify the period during which such differentiation was made.

Answer: Yes. From the beginning of the school until September 1971, no black students were allowed to enroll in the Plaintiff University. From September 1971 until August 1973 married black students were allowed to en-

roll. From September 1973 until May of 1975 any black staff member of the University who had been employed for four (4) years or more was allowed to enroll in the University. From May 1975, until the present, the University has had a totally nondiscriminatory admissions policy. As used in this answer to Interrogatory No. 9, enrollment in the University refers to regular enrollment in regularly conducted academic curriculum.

[page 10.]

• • •

13. Does the plaintiff require that the students admitted to the school subscribe to any belief that the races should not mix culturally or biologically? If the answer to this interrogatory is in the affirmative, please answer the following interrogatories and produce the requested documents:

(a) State the manner in which the students are advised that this is a requirement of their admission.

(b) If the advice is in writing, produce the written documents conveying the advice.

(c) Are the students required to affirmatively indicate their subscription to this belief?

(d) If the answer to subparagraph (c) is in the affirmative, state the manner in which the students affirmatively indicate their subscription to the belief; and

(e) If the students must indicate in writing that they subscribe to the belief, produce copies of the documents wherein they indicate the subscription.

Answer: Plaintiff requires that all students admitted to the University submit to the University's institutional policies.

(a) In writing.

(b) See response to Interrogatory No. 1.

(c) Students are required to affirmatively indicate that they will live up to the rules and regulations of the University.

(d) In writing.

(e) See response to request No. 1.

[page 16.]

• • •

15. Does the plaintiff require the teachers or other employees to subscribe to a belief that the races should not mix culturally or biologically? If the answer to this interrogatory is in the affirmative, please answer the following interrogatories and produce the requested documents:

(a) State the manner in which the teachers or other employees are advised that this is a requirement to their employment.

(b) If the advice is in writing, produce the written documents conveying the advice.

(c) Are the teachers or other employees required to affirmatively indicate their subscription to the belief?

(d) If the answer to subparagraph (c) is in the affirmative, state the manner in which the employees affirmatively indicate their subscription to the belief, and

(e) If the teachers or other employees must indicate in writing that they subscribe to the belief, provide copies of the documents wherein they indicate that they do so subscribe.

Answer: Faculty and staff members are expected to conduct themselves in accordance with the Plaintiff's religious belief and practices including its belief that the races should not mix culturally or biologically. The Plaintiff does not have different standards for faculty as those for students. Each prospective employee is carefully screened and if Plaintiff senses in an interview that there is a problem in these areas, that applicant is not hired. Upon information and belief all applicants are aware of the University's position and are aware that they would not be retained if they did not adhere to the University's rules and regulations. The Plaintiff further answers Interrogatory No. 15 as follows:

(a) Orally, informally and by word of mouth.

(b) Not applicable.

(c) Yes.

(d) By accepting employment with the Plaintiff.

(e) Not applicable.

[page 17.]

• • •

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

C. A. No. 76-755

Bob Jones University,

Plaintiff,

v.

United States of America,

Defendant.

REQUEST FOR ADMISSIONS

[Filed March 22, 1977]

3. The University maintains and operates its campus in Greenville, South Carolina, enrolling more than 5,000 students and employing a faculty and staff in excess of 850.

• • •

5. At all times relative to this cause, the University had the following admissions policy:

> Bob Jones University is required by law to admit students of any race to all rights, privileges, programs and activities generally accorded or made available to students at the University and the University does

not discriminate on the basis of race in the administration of its educational policies, admission policies, scholarship and loan programs, and athletic and other administered programs.

• • •

7. The above quoted rules and regulations are based upon the University's religious beliefs and practices to the effect that the principles of the Bible prohibit the intermarriage of the races.

• • •

9. The University conducts all its activities, including its educational activities in a religious environment.

10. Examples of the religious environment at the University are:

(a) Classes and University sponsored meetings are begun with prayer.

(b) Students are required to attend chapel services daily.

(c) Religious services of some type (formal services, informal services, prayer meetings) are regularly conducted in all University buildings.

(d) The University buildings contain religious plaques and pictures.

(e) All students are required to take at least one course in religion each semester.

(f) All faculty members are required to teach the religious beliefs and principles of the University.

11. The University's religious beliefs and practices concerning inter-marriage of the races have been published and made known to the faculty and students of the University and to the public. Examples of such publications are:

(a) Address of Bob Jones, Sr. given over radio station WMUU, Greenville, South Carolina, April 17, 1960.

(b) Transcript of the above identified radio address in pamphlet form distributed to the public.

(c) Article entitled "Can Two Walk Together Except They Be Agreed?", published in the April, 1971 issue of "The Voice of the Alumni", (a University related magazine).

(d) Reproduction of the above magazine article in pamphlet form distributed to the public.

(e) Chapel sermons delivered to the student body by the President and Chancellor of the University.

12. The University maintains and enforces admissions and attendance requirements based on religious beliefs and practices which are not directly related to this cause. For example, no atheist or agnostic is considered for admission. Any student or faculty member espousing or promoting atheistic or agnostic views is subject to expulsion.

13. The University has promulgated and enforces strict dating rules designed to maintain a high Christian moral climate for students attending the University. Examples of such dating rules are:

(a) Young lady students may date as follows:

Seniors—Number unlimited. Dates must be in the parlor during the following times: 1:00—5:45 p.m. and 7:00—10:30 p.m. on Monday through Saturday and 1:30—7:00 p.m. on Sunday.

Juniors—Four two-hour dates per week.
Sophomores—Three two-hour dates per week.
Freshmen—Two two-hour dates per week.

(b) Girls dating on Friday, Saturday and Sunday must fill in a form with the name of the boy she is dating and the time checking in.

(c) Women underclassmen are not permitted to date off campus except for dinner dates on Friday, Saturday and Sunday nights when accompanied by an official hostess.

(d) Faculty or staff women are official chaperones for couples. However, men faculty act as one when their wives are present. Single men do not act as chaperones for couples off campus except on an occasion when an official chaperone is present. Since faculty men have mixed classes, it is permissible for a faculty man to chaperone a mixed group on campus when permission is secured through the proper channels.

(e) Couples who plan to be married and to live in Greenville may secure a lady faculty or staff member to go with them one time to look for apartments from 4:00—5:45 p.m.

(f) When women students are assigned to use the University swimming pool, no men are allowed in the pool or the observation area and vice versa.

(g) The University's Student Handbook states "it is the business of Bob Jones University where its students go and with whom they associate. Therefore, dormitory students must have written permission to date off campus."

13. Organized and established religious groups recognized as exempt from taxation by the Government have rules, regulations and/or dogma which proscribe the intermarriage of the races. Some of these rules, regulations and/or dogma are implemented to the extent that those

violating such rules, regulations and/or dogma are expelled from such organized and established religious groups.

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O. Jack Taylor, Jr.
Wesley M. Walker
J. D. Todd, Jr.
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————, 1977

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[Certificate of Service omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CIVIL ACTION NO. 76-775

BOB JONES UNIVERSITY,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

DEFENDANT'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS

[Filed April 22, 1977]

• • •

5. Defendant admits that the University had the stated admissions policy during the time period covered by the complaint, but avers that the complaint is jurisdictionally defective, for the reasons set forth in defendant's Motion to Dismiss.

• • •

7. Admits that the above quoted rules and regulations are alleged to be based upon a religious belief that the principles of the Bible prohibit the inter-marriage of the races. However, defendant is without knowledge as to the "University's religious beliefs." Defendant admits that the University has established practices which deter or prohibit the inter-marriage of the races.

• • •

9. Admits, but avers that the atmosphere in which plaintiff conducts its educational activities is irrelevant to whether or not plaintiff is entitled to tax-exempt status. Plaintiff's qualification for tax-exempt status must be based, if at all, upon its operation as an educational institution.

10. Admits, but avers that the subject matter of the request is irrelevant.

11. Admits that the publications, addresses, articles and sermons referred to in the request have been published and made known to the faculty, the students and the public. However, the defendant is without knowledge as to whether these publications constitute the "University's religious beliefs".

12. Admits that the University maintains and enforces admissions and attendance requirements based upon what it professes to be religious beliefs and practices. Admits the second and third sentences of this request.

13. Admits that plaintiff has promulgated and enforces the strict dating rules alleged, but avers that defendant is without knowledge as to the purpose and effect of said rules.

• • •

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action No. 76-775

Bob Jones University,

Plaintiff,

v.

United States of America,

Defendant.

AMENDED COMPLAINT

[Filed May 27, 1977]

The Plaintiff would respectfully show:

1. The Plaintiff is an eleemosynary corporation created and existing under the laws of the State of South Carolina, carrying out educational and religious activities on its campus in Greenville, South Carolina. The Defendant is the United States of America.

2. This action arises under the Provisions of Title 28, Section 1346(a)(1) of the United States Code and Title 26, Section 7422 of the United States Code.

3. Plaintiff, since its foundation and for a period in excess of forty (40) years has operated exclusively for religious, educational and/or charitable purposes and has heretofore been recognized as an exempt organization under Section 501(c)(3) and related provisions of the Internal Revenue Code. As an exempt organization under Section 501(c)(3) of the Internal Revenue Code, Plaintiff is exempt from Federal Unemployment Taxes under Section 3306(c)(8) of the Internal Revenue Code.

4. By letter dated January 19, 1977, the Commissioner of Internal Revenue acting by and through the District Director of Internal Revenue, Atlanta, Georgia, abused his discretion and retroactively revoked the tax exempt status of the Plaintiff solely because of Plaintiff's adoption of its rules and regulations in accordance with its religious beliefs and practices. As a result of said revocation, Plaintiff became subject to payment of Federal Unemployment Taxes.

[page 1]

5. On February 4, 1976, the Plaintiff duly paid to the Internal Revenue Service the sum of $19.13 and on May 24, 1977, the Plaintiff duly paid to the Internal Revenue Service the sum of $1.87 for a total of $21.00, as payment in full of Federal Unemployment Taxes arising from the employment of one employee of the Plaintiff for the calendar year 1975. On May 24, 1977, the Plaintiff duly filed its claim for refund of said taxes, which claim for refund was denied on May 25, 1977.

6. The revocation of Plaintiff's tax exempt status and imposition of Federal Unemployment taxes is illegal and unconstitutional in that:

(a) it exceeds the authority vested in the Internal Revenue Service by the Internal Revenue Code of 1954;

(b) it is contrary to the provisions of Section 501(c)(3) and related provisions of the Internal Revenue Code in that said provisions set forth certain criteria for exempt status, some of which involve the rules and regulations of exempt organizations carrying out religious and educational activities;

(c) it is in violation of the First Amendment to the Constitution of the United States in that it would deprive Plaintiff of the right to the free exercise of its religious beliefs;

(d) it is in violation of the First Amendment to the Constitution of the United States in that it would promote, benefit and establish those religions believing in the mixing of the races;

(e) it is in violation of the Fifth Amendment to the Constitution of the United States in that it would deny Plaintiff due process and equal protection of the law;

(f) it is in violation of the First Amendment to the Constitution of the United States in that it would deprive Plaintiff of its rights to express and practice its beliefs by conducting and sponsoring the

[page 2]

peaceful assembly and association of those who share those beliefs.

(g) it is unlawful and in violation of the Constitution of the United States in that it constitutes an

attempt to exercise legislative powers by the Executive Branch;

(h) Plaintiff is operated exclusively for religious purposes as set forth in Section 501(c)(3) and related provisions of the Internal Revenue Code;

(i) Plaintiff is operated exclusively for educational purposes as set forth in Section 501(c)(3) and related provisions of the Internal Revenue Code;

(j) Plaintiff is operated exclusively for charitable purposes as set forth in Section 501(c)(3) and related provisions of the Internal Revenue Code;

(k) Plaintiff has been recognized as exempt under Section 501(c)(3) and related provisions of the Internal Revenue Code (including substantially identical prior provisions of the Internal Revenue Code) since at least April 30, 1942, from which time to the present the Congress of the United States has consistently re-enacted said Internal Revenue Code provisions granting exempt status in essentially identical form thereby approving, condoning and mandating exempt status for the Plaintiff.

7. As an exempt organization under Section 501(c)(3) of the Internal Revenue Code, Plaintiff is not liable for the payment of Federal Unemployment Taxes under Section 3306(c)(8) of the Internal Revenue Code and is entitled to a refund of said taxes paid as alleged herein.

WHEREFORE, Plaintiff prays for judgment against the Defendant in the sum of Twenty-One and No/100

($21.00) Dollars plus interest at the legal rate, the costs of this action and for such other and further relief as the

[page 3]

Court deems just and proper.

WESLEY M. WALKER
Wesley M. Walker
J. D. TODD, JR.
J. D. Todd, Jr.
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May 27, 1977.

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[page 4]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CIVIL No. 76-775

BOB JONES UNIVERSITY,

Plaintiff

v.

UNITED STATES OF AMERICA,

Defendant

ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIM

[Filed June 9, 1977]

The defendant, United States of America, for its answer to plaintiff's amended complaint herein, admits, denies and alleges as follows:

1. Admits the allegations contained in paragraph 1, except is without information or knowledge sufficient to form a belief as to any implication that the plaintiff is exclusively engaged in educational and religious activities on its campus in Greenville, South Carolina, and, if the characterization "eleemosynary" is meant to include "charitable" within the meaning of Section 501(c)(3), Internal Revenue Code of 1954, then denies that the

plaintiff is such a charitable corporation. Defendant further avers that plaintiff's attempt to qualify as an exempt organization under Section 501(c)(3) of the Code must be based, if at all, upon plaintiff's alleged status as an educational institution, not its alleged status as a religious institution.

[2]

2. Admits that this is a suit for refund of federal taxes and, therefore, within the jurisdictional statutes alleged in paragraph 2, but denies that the plaintiff is entitled to a refund.

3. Admits that the plaintiff has been previously recognized as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, but denies that, for the period for which refund of taxes is sought in the complaint, plaintiff was an exempt organization as described in Section 501(c)(3), and, therefore, denies that the plaintiff is exempt from Federal Unemployment Tax Act taxes under Section 3306(c)(8), and is further without information or knowledge sufficient to form a belief as to whether the plaintiff has operated exclusively for religious, educational and/or charitable purposes. Defendant affirmatively avers that plaintiff has not operated exclusively for religious, educational, or charitable purposes within the meaning of Section 501(c)(3).

4. Admits only that the Commissioner of Internal Revenue, in fact, revoked the plaintiff's tax-exempt status, alleges affirmatively that this revocation was consistent with the dictates of Section 501(c)(3), Internal Revenue Code of 1954, and denies all other allegations in paragraph 4.

5. Admits the allegations contained in paragraph 5, and avers that plaintiff filed a claim for refund of the

$19.13 payment on February 4, 1976, which claim was denied on May 3, 1976. Defendant affirmatively alleges that denial of both of said claims was correct and proper.

[3]

6. Denies the allegations contained in paragraph 6.

7. Denies the allegations contained in paragraph 7.

COUNTERCLAIM

For its counterclaim, which is authorized and sanctioned by the duly authorized delegate of the Secretary of the Treasury of the United States of America and is directed by the Attorney General of the United States of America, and is brought pursuant to the provisions of Section 7401 of the Internal Revenue Code of 1954 and Title 28, U. S. C. Section 1346, the defendant avers as follows:

1. This Court has jurisdiction of this counterclaim by virtue of Title 28, U. S. C. Sections 1343 and 1346(c).

2. On September 15, 1976, plaintiff filed with the Internal Revenue Service forms 940, Federal Unemployment Tax (FUTA) Returns, for the period December 1 through 31, 1970, and for each of the calendar years 1971 through 1975. The returns for the years 1971 through 1975 reflect balances due and owing to the Internal Revenue Service, which amounts were and have not been paid.

3. Upon examination of plaintiff's FUTA returns, the Commissioner of Internal Revenue, by his duly authorized delegate, determined that said returns improperly claimed tax credit, and that the computation of the balance due and owing was incorrect. Accordingly, on June 2, 1977, the Internal Revenue Service made additional FUTA tax assessments

[4]

against plaintiff with respect to said returns. Interest with respect to the unpaid taxes was also assessed on June 2, 1977. On the same date, notice and demand for payment of the taxes and interest were duly made.

4. The amounts of the taxes and interest shown due on the returns filed September 15, 1976, and additionally assessed on June 2, 1977, are as follows:

Year	*Tax*	*Assessed Interest*	*Total*
1971	$79,215.36	$27,312.48	$106,527.84
1972	$74,544.32	$21,215.45	$ 95,759.77
1973	$79,556.86	$17,799.28	$ 97,359.14
1974	$79,527.86	$13,080.19	$ 92,608.05
1975	$89,535.80	$ 7,808.79	$ 97,424.59

5. Plaintiff has paid the amount of $21.00 with respect to the FUTA tax for the year 1975. No other payments have been made.

6. Accordingly, there remains due and owing the unpaid balances of the taxes shown due on the FUTA returns for the years 1971 through 1975, the unpaid additional assessments, and the unpaid assessed interest, totalling $489,654.59, plus interest on all unpaid amounts according to law.

[5]

WHEREFORE, the defendant prays for judgment in its favor in the amount of $489,654.59, plus interest on all unpaid amounts according to law, for dismissal of plain-

tiff's complaint, for its costs, and for such other and further relief as this Court may deem just and proper.

THOMAS C. LYDON, JR.
United States Attorney

J. D. McCOY
Assistant United States Attorney

By: /S/ JOHN F. MURRAY
JOHN F. MURRAY

/S/ MARTIN B. WHITAKER
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Washington, D. C. 20530

[Certificate of Service omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

C. A. No. 76-775

Bob Jones University,

Plaintiff,

v.

United States of America,

Defendant.

PLAINTIFF'S SECOND REQUEST FOR ADMISSIONS

[Filed December 16, 1977]

• • •

3. The sole factual reason for revocation of the University's tax exempt status derives from the University's promulgation and enfercement of certain of its rules and regulations as follows:

(a) Applicants and/or students who are partners in an interracial marriage will be denied admission and/or expelled.

(b) Applicants and/or students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be denied admission and/or expelled.

(c) Applicants and/or students who date outside their own race will be denied admission and/or expelled.

(d) Applicants and/or students who espouse, promote, or encourage others to violate any of the University's rules or regulations, including those set forth above, will be denied admission and/or expelled.

[Page 1]

• • •

5. The foregoing rules and regulations were in force and effect and on a formal basis at all times relative to this cause.

6. The foregoing rules and regulations have been formally or informally expressed and enforced by the University since its foundation.

7. The foregoing rules and regulations are based upon the religious beliefs and practices of the University.

8. The foregoing rules and regulations are an expression of the religious beliefs and practices of the University.

• • •

11. The religious beliefs and practices of the University are entitled to protection under the First Amendment to the Constitution of the United States.

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December 16, 1977.

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IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CIVIL NO. 76-775

BOB JONES UNIVERSITY,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

DEFENDANT'S RESPONSE TO PLAINTIFF'S SECOND REQUEST FOR ADMISSIONS
[Filed January 17, 1981]

• • •

3. Denies that the sole reason, factual or legal, for revocation of the University's tax-exempt status derives from the University's promulgation and enforcement of the stated rules and regulations. Defendant admits that the University has promulgated, has enforced, and does enforce the stated rules and regulations, and avers that said rules and regulations are inconsistent with the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Defendant avers that the tax-exempt status of the University was revoked because of the failure of the University to accord its practices with the requirements set forth in Revenue Rulings and Procedures 71-447, 72-54, 75-50 and 75-231, promulgated by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code.

• • •

5. Admits, with the understanding that the time period referred to in the Request for Admissions is the year 1975.

6. Defendant is without information as to the history of the subject rules and regulations, and must therefore deny Request for Admission 6. On the basis of plaintiff's answer to defendant's Interrogatory No. 7, defendant admits that from September 1965 to the present time plaintiff has maintained and enforced the subject rules and regulations as part of plaintiff's overall policy with respect to students and prospective students. Defendant further admits that the subject rules and regulations are consistent with the racially discriminatory practices, policies and reliefs expressed and enforced by plaintiff since its foundation.

7. Admits, except denies that plaintiff is a religious organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, and denies that the basis for plaintiff's discriminatory policy with respect to students and prospective students, whether or not that basis is a religious belief, is relevant to the issue of whether or not plaintiff is entitled to tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

8. Admits, except denies that plaintiff is a religious organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, and denies that the basis for plaintiff's discriminatory policy with respect to students and prospective students, whether or not that basis is a religious belief, is relevant to the issue of whether or not plaintiff is entitled to tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

• • •

11. Admits, but expressly denies any implication that the First Amendment of the Constitution of the United States protects or sanctions plaintiff's racially discriminatory policies and practices so as to entitle plaintiff to tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, and denies that denial to plaintiff of tax-exempt status constitutes a violation of or an infringement upon plaintiff's Constitutional rights, privileges and benefits.

THOMAS E. LYDON, JR.
United States Attorney

JAMES D. MCCOY, III
Assistant United States Attorney

By: /S/ MARTIN D. WHITAKER
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[Certificate of Service Omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

C. A. 76-775

Bob Jones University,

Plaintiff,

v.

United States of America,

Defendant.

PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM

[Filed April 28, 1978]

Replying to the Counterclaim of the Defendant, the Plaintiff would show:

1. Admits the allegations contained In Paragraph 1 of the Counterclaim.

2. Admits that on or about September 15, 1976, the Plaintiff filed FUTA returns for the period December 1-31, 1970, and for each of the calendar years 1971 through 1975.

3. Admits that FUTA taxes were assessed by the Internal Revenue Service, but denies that such assessments are correct.

4. Admits it has paid Twenty-One and No/100 ($21.00) Dollars with respect to the FUTA tax for the year 1975.

5. Each and every allegation contained in the Defendant's Counterclaim not hereinabove specifically admitted, is denied.

6. Further replying to the Defendant's Counterclaim, the plaintiff would re-allege the allegations of the Complaint herein as if fully set forth in this Reply.

WHEREFORE, having fully replied, the Plaintiff prays that the Defendant's Counterclaim be dismissed with costs.

Of Counsel:

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[Acceptance of service omitted]

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

BOB JONES UNIVERSITY

Plaintiff

v.

THE UNITED STATES OF AMERICA

Defendant

Non Jury Trial
May 10, 1978

Greenville, South Carolina
[May 10, 1978]

Appearances:

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JAMES D. MCCOY, III, Assistant U. S. Attorney, for the District of South Carolina, and Mr. MARTIN B. WHITAKER, Assistant U. S. Attorney, Tax Division, Washington, D. C., for the Defendant.

JOSEPH D. SMITH
Official Court Reporter

• • •

[36]

DIRECT EXAMINATION:

QUESTIONS BY MR. TAYLOR:

Q. State your full name, please, sir.

A. Bob Jones, III.

Q. Dr. Jones, where are you employed?

A. Bob Jones University.

Q. What is your position there?

A. I'm President.

Q. Would you briefly state your duties as President?

A. All right. I fulfill the role of Chief Executive Officer. The University is administered under the authority granted. The offices are administered under the authority

[37]

granted by the Board of Trustees. I have jurisdiction over the academic, the disciplinary, the cultural and certainly the religious aspect of the institution.

Q. All right, sir. Dr. Jones, could you tell us briefly what Bob Jones University is, what sort of institution it does and what its activities are?

A. Yes. I think that perhaps three sentences from our by-laws and charter would best explain that. My Grandfather founded the school in 1927 when he was an evangelist. He felt burdened that so many young people were going off to colleges and having their faith stolen. And that God impressed on him that there ought to be a school that stressed the importance of quality academics, culture, refinement, all the rest, but at the same time, train the individual to be a proper Christian.

And in the preamble to the by-laws of the charter says that the general nature and objective of the corporation shall be to conduct the institution for learning for the general education of youth in the essentials of culture and the arts of sciences, giving special emphasis to the Chris-

tian religion and the ethnics revealed in the holy scriptures, combating all atheistic agnostic, pagan, so called scientific adulterations of the gospel, unqualifiedly affirming and teaching the inspiration of the Bible, both the Old and New Testaments; the creation of man by the direct

[38]

act of God, the incarnation and virgin birth of our Lord Jesus Christ, his identification as the Son of God, his vicarious atonement for the sins of mankind by the shedding of his blood on the cross, the resurrection of his body from the tomb, his power to save men from sin the new birth through the regeneration by the Holy Spirit and the gift of eternal life by the grace of God. That is the purpose of Bob Jones University.

Q. All right, sir. I believe you testified that the University was founded in 1927, in Florida, by your Grandfather. Could you quickly give us a history of the university since its founding?

A. Yes. We stayed in Florida through the depression. All the banks in Florida went broke. My Grandfather cashed out his life insurance to pay the school's debts. Shortly after the depression, people were not able to travel extensively, funds were limited. It became evident that if we wanted to draw students, we should move to a more central location. My Father had seen an abandoned campus in Cleveland, Tennessee. Subsequently we bought that campus. We were there approximately thirteen years and, as you have stated earlier, the city had grown up around us, we could not expand. We had looked at a number of locations. In fact, my Grandfather and business manager, Dr. Johnson, were in Knoxville, Tennessee. We were ready to sign an option on

[39]

some land there. And E. Roy Stone, a realtor here in Greenville called and said don't sign anything until you come and look at something, we will send a plane over. And my Grandfather—I believe my Father was present, I'm not sure—stepped on the land that we now occupy. God impressed on them this is the place. They felt very settled about the matter. Thirteen months Daniel Construction completed the original campus, and we opened school. We have been here now almost thirty years in Greenville, just over thirty years, and the university has grown to a school of fifty-seven hundred students. And the student body coming from every state in America and about foreign countries. I think that takes care of the history pretty well.

THE COURT: Where did you start in Florida?

THE WITNESS: Near Panama City, New Haven, Florida.

Q. (By Mr. Taylor) Dr. Jones, would you describe for us the educational activities of the university? What sort of educational levels are provided, and what sort of degrees are provided or awarded?

A. All right. We have a kindergarten through graduate school actually. On the college level, we have a school of education, a school of fine arts, a school of religion, a college of arts and sciences and a school of business. That's five. We offer fifty different academic degrees. And in our graduate schools we offer the Masters Degrees in

[40]

various phases of education, in religion and in the fine arts, and we offer the Doctorate PHD in Bible. We have

about a thousand young men studying for the ministry; we have about thirteen hundred men and women preparing to teach. Most of them will go into christian schools, It's estimated that a christian school is springing up in America every seven hours, and we are called upon to help staff those schools.

The university's position is that whatever the Bible says is so. Everything taught in the classroom is taught from that premise. We teach the students in science what Darwin had to say and what the many shades of evolutionists since then have had to say, but we then take the Bible and say we reject this as being factual because the word of God says that man was recreated by a direct act of God and not through an evolutionary process. We would teach what Marx and Lenin would have said, but we would say the Bible says they are wrong, because the Bible puts the emphasis upon the worth of the individual, not upon the value of society. In every area where any of man's philosophies contradicts, cuts across the grain of the word of God, we take the Bible position. We are training Christian leadership, we are not training people just to be professional people.

There are twenty-five hundred institutions of higher learning in America where these people could go to get the essentials of math, science, English, history,

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modern language, etcetra. We are teaching them to be Christian leaders. As mentioned earlier, every class opens with prayer, the close of every day in the domatories the student have a fifteen minute period where they gather together with their room or with four rooms, depending on the day of the week, for prayer meeting, where they share one another's prayer burdens. Every cultural event, every athletic event opens with prayer. We take the posi-

tion that the students come to learn from us, not to teach us. Nobody makes them come, it's purely voluntary. We say that attendance is a privilege and not a right. If they violate that privilege, they forfit the privilege to be there. We enforce our discipline. There is no way you can separate the university's academic position from its spiritual position; the warf and woof cross with one another. And every teacher, for instance, has to be a born again individual. We would not hire, for instance, a PHD in English who did not also give testimony to a saving experience with Jesus Christ, who did not also consider his mission at Bob Jones University to be the training of Christian character. We would not have a teacher whose life style was in opposition to the building of Biblical principle in the lives of our students; in otherwords, we would not teach the students what the Bible says about Christian character and then hire a teacher whose life style is contrary to it.

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We insist that the teachers hold the essentials of faith embodied in this statement I have just read from our Bible, the Preamble. We insist that they live it, not only believe it but live it in practice, and if they don't, then they disqualify themselves, and we will not keep them as teachers in the institution. We are not merely imparting academic understanding, we are imparting an understanding of what the Bible says to these young people. And in every subject matter, the Bible position is presented; for instance, in the study of literature, if a man's—take in the writing of a short story or a novel or whatever it might be they are studying, a poem; if his position is antiscriptural in the sutdy of that piece of literature, the unscriptural position is that is pointed out to him, so that the student can learn to distinguish between that which is of God and

that which is the product of an atheistic or antigod mind, so that he can combat that. That's part of the preamble, combating all atheist, agnostic and so called scientific adulteration of the scripture. That's the purpose of Bob Jones University.

Q. All right, sir. Doctor Jones, does the university have any religious belief concerning the mixing of the races or the racial issue?

A. Yes, sir, we always have. And if the Court would like, I could turn to a few passages of scripture and discuss

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those matters, whatever you would like.

THE COURT: Well, I want to know what your basis is, that's the reason I asked the question earlier in the proceedings.

THE WITNESS: All right, sir. Let me start in the Book of the beginning in Genesis. Let me preface this by saying that we believe the Bible, from beginning to end, teaches that man was created to be the—for the pleasure and the glory of God. Man, when he sinned, put himself as the enemy of God and forfited the right of Godly sonship, became the child of the devil. We believe that through a regenerating saving experience with Jesus Christ, through the virtue of His shed blood on Calvary's Cross, that man is reconciled to God and is redeemed, the Savior has redeemed him, that man does not redeem himself by his morality, his membership in a church. We believe that the kingdom of man, which is essentially in opposition to the plan of God, through the fall in the garden, that history reveals that man has, through a series of subsequent events, raised himself up to challenge God's authority over mankind.

In the Book of Genesis, the Tower of Babel, man said we will build us a tower and we will ascend unto God. The Hebrew meaning of those words is, we will pull God down from his heaven, that we will build a united kingdom so mighty and strong that God will not be able to rule over us any more.

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Again in the Book of Daniel, Nebuchadnezzar built the great image ninety feet high and commanded that all the kingdoms come and worship and fall down before that image. There were three men who didn't, Shadrach, Meshach, Abednego; they said our God is able to deliver us, and he will, but if he doesn't, he is still God, and we will not bow down before your image.

We feel that Bob Jones University is in the position, because of its scriptural position of refusing to bow down before the image of government, which is really demanding our worship.

THE COURT: Now, tell me the scripture verses. I'm familiar with the various books and Shadrach, Meshach and the Tower of Babel. What's that got to do with the races?

THE WITNESS: That's what I'm trying to show is that man is trying to build a united world to overrule God's authority.

And in Revelation and Ezekiel and Jeremiah it speaks about the antichrist who will one day rule the world under a one-world government, one religion, one army. We believe the efforts of one race and everything else is a part of building of antichrist. Believing the Bible, we don't want to contribute to that which is of the devil and of the antichrist. And the breaking down of the barriers that God has established to divide the world so that it can't get

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together in rebellion against Him, that the observance of those lines of distinction we feel, as Christians, we feel we must adhere to and propagate. Now, for instance, some of the verses that talk about the lines that God has established, Genesis in the tenth chapter, the thirty-second verse, after the flood: "These are the families of the sons of Noah, after their generations, in their nations: And by these were the nations divided in the earth, after the flood."

Again passage in Genesis, Chapter 11, Verses 8 and 9, speaking of the division God has made: "So the Lord scattered them abroad from thence upon the face of all the earth."

THE COURT: This is after the Tower of Babel?

THE WITNESS: No, these verses are dealing with the Tower of Babel, after the tower is built, God destroyed it and got scattered them—"And they were left off to build the city, the name of it called Babel, because the Lord did there confound the language of all the earth; from thence did the Lord scatter them abroad upon the face of the earth."

In Deuteronomy, the 32nd Chapter, Verse 8: "When the Most High divided to the nations their inheritance, when he separated the sons of Adam, he set the bounds of the people."

In Acts, Chapter 17, again it speaks: God hath set the bounds of their habitation, if happily they might seek after God; Acts 17, 32, God keeps the nations divided

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so that they might seek after him, and the people be divided here were three; Shem, Ham and Japheth, and from

those the three basic races of mankind had sprung. That was all that was left after the flood, all the decendants of one of those three families, and God scattered them, God divided them for the purpose of men seeking after God. Our purpose is to train people to seek after God. So, we feel that we can't contribute to the bringing together again of that which God has divided. So, this is the basis of our religious conviction; that God's intent for the races to remain distinct and different. We are not saying there is inferiority involved, we are just saying distinction and different that God himself has established.

Then in Daniel the 7th Chapter, Verses 13 and 14, speaking again of this, of what's going to be in the end time, the effort being made by man to bring the world together which God had divided, Daniel said: "I saw in the night visions, and, behold, one like the Son of man came with the clouds of heaven, and came to the Ancient of days, and they brought him near before him.

And there was given him dominion, and glory, and a kingdom that all people, nations, and languages, should serve him: his dominion is an everlasting dominion, which shall not pass away, and his kingdom that which shall not be destroyed."

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God said there is going to come a day when the world will be united, but it will be united under the authority and the rule of Jesus Christ. And that's the day we look forward to, and the day we are preparing for; not the day when man says we can go from God and we are going to pull the world together by our efforts, but the day when the Lord overrules all of those efforts of man himself and pulls the world together and rules over it and is the Lord of it.

In Zechariah the 14th Chapter, this is again spoken of that day in the future: "And it shall be, that whoso will not come up of all the families of the earth unto Jerusalem to worship the King, the Lord of hosts, even upon them shall be no rain."

And in Revelation the 11th Chapter, the 15th Verse, speaking of that future kingdom which the Lord will rule over, when all the world will be united under his dominion, Revelation 11, 15: "And the seventh angel sounded; there were great voices in heaven, saying, the kingdoms of this world are become the kingdoms of our Lord, and of his Christ ; and he shall reign for ever and ever."

Then one more verse, Revelation 21, Verse 24: "And the city had no need of the sun, neither of the moon, to shine in it: for the glory of God did lighten it, and the Lamb is the light thereof.

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And the nations of them, which are saved shall walk in the light of it: and the kings of the earth do bring their glory and honour into it."

The Bible teaches that man tries to bring his world together over God's objection to unite everything, to make everything one. God says, no, I'm saving that day for myself when I will do that. And as those who love and worship the Lord, we don't want to contribute to mans' efforts which God has cursed, we want to wait for that day that the Lord is going to bring all things together in subjection to him.

This is why we have religious convictions against things—anything, whether it be religious equanism, the taboos against the marriage between the races; God has divided people religiously, he has divided them geographically, he has divided them racially. But there is

coming a day when all of that will cease, and until that day comes, we intend to do our best to keep the lines that God has established.

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Q. (By Mr. Taylor) Doctor Jones, how has the university sought to express these religious beliefs that you have just testified to? What concrete step has the university taken to put this into action, so to speak?

A. All right. The school has always, in an effort to enforce, we believe to be the Bible position against interracial dating and marriage or the obliteration of any other line of distinction that God has established. In this particular case, we have forbidden interracial dating and marriage. It was not necessary to enunciate these things in writing until the racial revolution took place in America, and until we saw concerted efforts being made to achieve the acceptance of interracial marriage as being perfectly all right.

The university will enforce, will observe its conviction against interracial dating and marriage at all costs.

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Our previous admissions policies we felt were the safest way we knew to protect that conviction, since the agitation between the blacks and the whites on the matter of acceptance of interracial marriage and dating, was a hot issue and a focal point. We said the only way we know to be sure our convictions are observed, is during this time to say that we cannot accept blacks. That was not through any animosity towards blacks.

I can remember hearing my Grandfather on many occasions saying I wish there could be—back in the early '50's—I wish there could be a Bob Jones University train-

ing just exactly like this for blacks. And he had a great burden for these people as we do today. I am glad they are there today. And we have not had one moment's difficulty since the admissions policy was changed in May of 1975. When it was changed, it was changed because of the court ruling that private institutions could no longer have racially discriminatory admissions policies.

We say we are a law abiding people. The Lord says, "Render to Caesar what is Caesar's." Caesar has said in this case you have to open your doors, you can't any longer do without tax exemption or do without whatever you have to do without in order to abide by your convictions in this regard. So, we said, "All right, we will not sacrifice our convictions against interracial dating and marriage, we

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will still enforce it as its always been enforced; we think it may be more difficult to enforce it now, but our conviction was not against the admission of blacks, our conviction was against the interracial dating and marriage. And our admissions policy previous to 1975 were the easiest way we knew, the safest way, to protect that conviction. But since the courts have stripped us of that protection, we say, all right, we have no conviction against admitting, we will admit them, but we will have to be sure that our convictions are continued against interracial dating and marriage. And that has been continued, and we have not had one moments trouble, we are not a discriminatory institution. Anybody can walk there and find the blacks engaged in every activity that the whites are engaged in. And, I think, Your Honor, you hit right on the substance of the matter when you said if it is discriminatory, I guess the whites, orientals are discriminated against as much as the blacks. But we do not maintain there is a discrimination. It is an applied rule just like

our rules against drinking, against adultry, a lot of other things, they are applied without respect to a person's race.

Q. (By Mr. Taylor) All right, sir. Doctor Jones, has the university admitted blacks pursuant to this policy that you have just described?

A. Yes. In 1975, in the Fall of that year, we admitted

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our first black. At this time, we have five blacks. We have received other applications. They are processed just like the white students' applications. There is not the slightest designation in the admissions files of the fact that this person is black, and therefore he is segmented over here in some special area. We have had not the least bit of problems of any nature since we have admitted these blacks; it's been a very, very happy situation. And we are glad to be able to train these to be Christian leaders in America.

Q. All right, sir. Doctor Jones, perhaps it would help the Court if you would tell us exactly what the admissions policy of the university is now, and what are these dating rules and regulations that you have referred to. Could you be more specific in those areas?

A. I don't have a copy of the admissions policy with me.

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Q. (By Mr. Taylor) I understand, Dr. Jones, you do not remember it verbatim as to the policy, but if you would tell us basically what it is. I'm not sure, I think you explained to some extent how it works, but I'm not sure you really testified as to what it is, now.

A. Essentially it says that Bob Jones University does not discriminate on the basis of a person's race.

THE COURT: How do you get into Bob Jones, you make an application?

THE WITNESS: Yes, sir.

THE COURT: What happens then?

THE WITNESS: All right. Then the admissions officer takes that application and sends out a request for references from three individuals that the applicant has listed as his references. And we tell the applicant that he must send to us a copy of transcripts of all his previous education from high school on up. And we get a certificate of health from the doctor, which the applicant must furnish. We require that the applicant take the ACT Examination, which is a college testing exam. And then when all of these records are in hand, they are evaluated as to the person's character.

THE COURT: Well, then, how do you confirm on your applications his religious beliefs?

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THE WITNESS: We ask him to give a brief statement of his—

THE COURT: This is on the application?

THE WITNESS: Yes, sir, of his educational objective. We also ask him to state what church he comes from, and basically a person who has personal relationship with Christ, when he states his educational objective, he states there that he wants to prepare himself to serve the Lord Jesus Christ, to get a Christian education. He is coming to us not for education but for a religious indoctrination. And then if there is anything in that to indicate that this person is a heathen, then we would go back to him, and you know, and ask him what is your background specifically.

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MR. TAYLOR: By the way, Dr. Jones, at this point I will ask you simply if you would, could you tell us what the institute of Christian service is at Bob Jones University?

THE WITNESS: This is a three year nondegree, noncredit program designed for those who have been out of high school a number of years and don't feel that they can subject themselves to the rigors of academic pursuit again; or designed for those who did not do well in high school but feel called of God into some kind of Christian service, investment of their life in a fulltime way for the Lord. And this program is designed to help get them thorough knowledge of the Bible principles of the word of God and Christian character training. The work does not transfer into Bob Jones University or any other institute of higher learning, it is a Christian training institute.

Q. (By Mr. Taylor) Do the same admissions policies apply to applicants for that part of the university as to regular students?

A. Yes, they do.

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Q. By the way, Dr. Jones, who owns Bob Jones University?

A. The university is a corporation not for profit, chartered by the State of South Carolina, it's not owned by anybody. I receive a salary. My Father receives a salary. My Grandfather received a salary when he would take it. The Jones family does not own Bob Jones University, it never has owned it doesn't want to own it. We are a charitable institution in that we are nonprofit and we serve the general public meeting their spiritual

needs. No faculty member owns it, the Board of Trustees doesn't own it. No denominational church owns it; a totally independent Christian arts university.

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Q. (By Mr. Whitaker) Dr. Jones, there is nothing in the charter or in the bylaws which specifically refers to the university's belief with respect to interracial marriage and dating, is there?

A. No, there is nothing in the bylaws relating to a great many of our beliefs and practices.

Q. Concerning the academic quality of the university, would it be fair to say that a teaching degree or Bachelors Degree from the university would carry at least the same weight as the degree from the University of South Carolina?

A. Yes.

Q. So, that a person with a teaching degree would meet the state requirements for teaching, for instance?

A. Yes.

THE COURT: You haven't been reading the law, you have to take an exam. There has been about how many federal lawsuits over that question of the teachers' exam?

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Q. (By Mr. Whitaker) The applicants to the university, Dr. Jones, would it be fair to say that a great many of these applicants referred from former students or friends of the university?

A. Yes.

Q. So, that would—would you feel that it would be fair to say that many applicants, when they apply, are already familiar with the general nature of the university?

A. Many of them are.

Q. Does the university have any regular recruiting program, for instance, with high school counseling services, placement offices, that type of recruiting?

A. The university selects high schools around the state each Fall, to which we send one of our admissions officers for their college dates. Other than that, we have nothing you could call a formal recruiting effort.

Q. Do you receive applicants or are applicants referred to you from members of the clergy, religious persons around the country, with whom the university is familiar?

A. Yes.

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Q. Concerning the change of admissions policy, if you would, please, sir, refer to the May, 1975 minutes of the

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board meeting. If I may approach the Witness.

THE COURT: All right.

Q. (By Mr. Whitaker) On the third page, which has page 197 printed at the top, if you would please refer to the resolution, describe that in the exhibit.

A. All right. That resolution authorizes the officers of the school to change the admissions policy as they saw the need to, and in conformity with the beliefs of the school, would that be a fair summary?

A. Yes, sir.

Q. Did the—and you are one of the officers; in fact, the primary officer of the university?

A. Yes.

Q. Did the officers of the university change the admissions policy pursuant to this authorization?

A. Yes.

Q. Do you recall when that change took place?

A. Yes. I had to refresh my memory on that. It was May the 29th, 1975.

Q. And what did you look at in refreshing your memory on that?

A. There were some memographed copies of the statement to be released to people who wrote inquiring as to why the policy had been changed. And I looked at one of those statements. That's also, I believe, copied in our Brief.

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Q. Now, does the statement—I haven't seen a copy of it—does that have a date on it as to when it was published?

A. Well, it says the university admissions policy changed as of April 29, 1975, and it stated the policy.

Q. Do you have a copy of that with you?

A. No, I do not.

Q. Do your Attorneys have a copy with them?

A. I don't know.

Q. At this time, under Rule 612 of the rules, we would request the Court allow us to inspect it.

THE COURT: Do you have a copy of that? You said May 29 one time and April 29 one time.

THE WITNESS: I meant May.

MR. TAYLOR: Your Honor, we do not have a copy of what Dr. Jones is referring to.

THE WITNESS: There is an extract of it in your Brief.

MR. TAYLOR: Well, there may be an extract of the policy, Your Honor, setting forth what it was.

THE COURT: Could you check and see if there is such a document and make it available to the Court and to Counsel for the Government?

MR. TAYLOR: Yes, sir.

THE COURT: All right.

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Q. (By Mr. Whitaker) Doctor Jones, did you also—did the officers of the university have any formal resolution, writing, document, setting forth as of this date we have adopted the following policy?

A. Well, the statement I referred to is the official statement, and it came as a result of the decision to change the policy.

Q. Now, didn't you write a letter, Dr. Jones, to the university's counsel, to Mr. Taylor, saying as of a certain date the university has changed its policy, and the new policy is as follows?

A. I don't know what the Court would consider to be the privilege of a client-attorney correspondence.

Q. My question is whether you did write the letter?

THE COURT: To whom?

MR. WHITAKER: To Counsel for the university.

THE WITNESS: Yes, I told the Counsel we had changed our policy.

Q. (By Mr. Whitaker) Do you recall when that letter was written?

A. It would have been after this meeting. I'm not sure I know the date. It would have been around May the 29th, could have been written on the very date the policy was changed, for all I know, I don't have the letter in front of me. In fact, I haven't seen that letter, I don't guess, since—

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I wrote it.

Q. How is the Director of Admissions, Mr. Christ advised of the change in policy?

A. I don't know whether he would have been referred a copy of that letter, or whether we wrote up the statement which I referred to previously, the memographed statement, which went out, which was memographed over his signature, but whether it came to him in that form or in a form of a copy of the letter to the Attorney, I don't recall.

Q. But there would have been something in writing to notify him of the change?

A. Yes, that's right.

Q. I would like to show you what's been marked for identification as Defendant's Exhibit 2, which is a letter from the university's Counsel to the Internal Revenue Service. And referring—if I may approach the Witness, Your Honor—the bottom of the first page and top of the second page referring to adoption of admissions policy. My question, sir, while you are reading over that, is what is set forth in the letter the policy which was adopted?

A. I believe this is the policy which I referred to as being memographed.

Q. Thank you. Did the university issue any press releases when the policy was changed, or at any time thereafter?

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A. To the best of my knowledge, we did not.

Q. All the university did was have the memographed form to respond to inquiries?

A. No, that's not all we did.

Q. In the way of notice?

A. No. As a matter of fact, my Father and I toured the country speaking at, I guess, in excess of forty differ-

ent banquets where prospective students, alumni, friends, donors, would be gathered. We do this every summer. In that particular summer, I know that I spent considerable time addressing the issue of the admissions policy change, which was notifying our constituents of the fact. I don't know what my Father did, I assume he did the same thing.

Q. And these banquets, these were regular annual banquets of friends, alumni, donors of the university?

A. It's primarily a recruiting time to which our friends and former students bring prospective students to get them acquainted with the school.

Q. Concerning the religious belief of the university, with respect to interracial dating and marriage, it's your testimony, I gather, that this belief has never changed since the school was founded?

A. That's correct.

Q. I would like to ask you—I would like to read to you a sentence from the Affidavit which you wrote in September,

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1971. If you would like to look at it, certainly you may.

A. Go ahead, read it.

Q. I will just read you the sentence and ask you if this is still the university's belief. "I further believe that if Bob Jones University were to admit members of the Negro race, that the university would be promoting such intermarriage and would be providing conditions under which such intermarriage is more likely to occur contrary to religious beliefs and practices upon which the university was founded and has been continuously operated."

A. If you recall just a few minutes ago, I said that the previous admissions policies were the safest way we knew to protect our religious conviction against interracial dating and marriage, and I still contend that that would

be the safest way to protect our policy. But the courts do not afford us that luxury any more, and, therefore, we are protecting the convictions the best way we know how by not—by enforcing the rules against interracial dating and marriage.

Q. With that background in mind, however, would it be fair to say that the statement I have just read was the university's belief in 1975?

A. Yes, sir, and it's still our belief, that was the safest way to protect our convictions.

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Q. (By Mr. Whitaker) And the university, during 1970, through 1975, it would not have been contrary to the religious beliefs of the university to admit blacks, is that correct?

A. State that again.

Q. From 1970 through 1975, admitting blacks would not have contrary to the university's religious beliefs?

A. I already stated that we did not have any religious convictions against admitting blacks—against interracial dating and marriage.

Q. And, in fact, in the late 1940's the university had a few part-time black students, special students, is that correct?

A. That was prior to my having anything to do with the school.

Q. Prior to the change in mid 1975, however, the

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university would not admit single blacks, is that correct?

A. I don't recall the year we agreed to admit married blacks. Until 1975, we did not admit single blacks.

Q. Doctor Jones, I would like to, if I might approach the Witness, Your Honor—

THE COURT: All right.

Q. (By Mr. Whitaker)—to ask you to refer to the executive committee meeting minutes for September 1, 1971. The fifth paragraph and the sixth paragraphs.

A. Okay.

Q. My question, Doctor Jones, is if the university had admitted married students, married black students, would their children being on campus have presented any problem to the university?

A. Well, their children would not have been on campus unless they had been enrolled in the elementary school. If you refer to the children coming on campus with their parents, the answer is no, it would have created no problem. As far as I know the married students brought their children on campus, they were never told they couldn't.

Q. And having the colored children on campus, as the reference said in the minutes, would not have been in any way contrary to the school's religious beliefs?

A. Not at all.

Q. Would having the children in the kindergarten be

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contrary to the school's religious beliefs?

A. No.

Q. Having black faculty members would not be contrary to the school's religious beliefs, would it?

A. No.

Q. Or having oriental faculty members?

A. No.

Q. In 1975, the university did not have any black faculty members, did it?

A. No.

Q. It did have at least one oriental faculty member, is that correct?

A. Yes.

Q. Do you recall the matter with the Veterans Administration concerning student loans, don't you?

A. That's a very unpleasant subject.

Q. With respect to that, in 1975, did the university agree to sign a statement of compliance with the Civil Rights Act?

A. No. I might add that the reason that we did not, the Civil Rights Compliance Act contained a clause that we would agree to any positions enacted by HEW pursuant thereto. We didn't like what HEW was doing then, let alone we would be willing to trust them and sign an agreement to anything that they would do pursuant to that act. That would have been

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suicide to swear away our future as a free religious institution having the right to carry on the practice of our religious beliefs. We feel like the government has raped us as it is.

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DAVID CHRIST, a witness on behalf of the Government, having been duly sworn, testified as follows:

DIRECT EXAMINATION:

QUESTIONS BY MR. WHITAKER:

Q. Would you state your name please?

A. David Christ.

Q. Is it Doctor Christ?

A. No, sir.

Q. What is your occupation?

A. I'm currently Director of Admissions at Bob Jones University.

Q. Have you been Director of Admissions since 1970?

A. Yes, sir, I have.

Q. And for some time prior to 1970?

A. My first association with the Admissions Office

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began in 1966.

Q. You were here this morning when Dr. Jones testified as to how students learned about the school, were you not?

A. Yes, sir, I was.

Q. And addition to the methods of promoting the knowledge of the school to which Dr. Jones testified, you also use a spring visitation period?

A. Yes, sir, that's correct.

Q. Would you please explain generally what is the spring period?

A. The spring visitation period is a program that we term let's get acquainted days. It's a two-day period of time in which we invite young people to come to the campus, stay on the campus and get the feel of the campus atmosphere for that period of time.

Q. These people would stay in the dormitories, generally?

A. Most of them do.

Q. Approximately how many people attend the spring period?

A. That will vary from year to year. This past year we feel that there was something just under two thousand young people visiting.

Q. And the attendance was fairly substantial in 1975?

A. Yes, sir, that would be correct.

Q. Is the spring visitation period—would be used

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primarily for persons who have not yet applied or have not yet been admitted to the school, would that be correct?

A. Yes, sir, that's the basic objective of the program.

Q. So, it's more of a long range recruiting device?

A. Yes, sir, that's correct.

Q. Would it be fair to say that during this spring visitation period, the get acquainted days, that the students would become well aware of the social life and atmosphere of the school?

A. I think that could be assumed, since they stay in the dormitories and have contact with our present students.

Q. And in most cases they would become familiar with the various student rules and regulations?

A. That would be likely, yes.

Q. As Director of Admissions, and speaking on behalf of the Admissions Office, would it be a fair statement to say that the role of the admissions committee is to insure that applicants are compatible with the university and that the university is compatible with the applicants?

A. That would be one of the functions of the committee.

Q. What is the Admissions Committee as opposed to the Admissions Office?

A. The Admissions Committee is comprised of those who would be involved in making decisions on applicants.

Q. And you and—

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A. The Admissions Office would be more along the clerical lines.

Q. You and Dr. Jones and several of the deans and several of the other persons are on the Admissions Committee?

A. That's correct.

Q. And I believe the Admissions Committee that makes the final determination on whether an applicant is accepted in the school?

A. Yes, sir, they would be the final authority.

Q. And would it also be the functions of the Admissions Office and the Admissions Committee to apply the university guidelines, rules, regulations, beliefs, to specific situations?

A. Yes, sir.

Q. Prior to—you are aware of the change in admissions policy in the middle of 1975, aren't you?

A. Yes, sir.

O. How did you become aware of that change?

A. I was made aware of that change by having referred to me a copy of the letter which was dictated by the President to Mr. Jack Taylor.

Q. That is to the Counsel for the university?

A. That's correct.

Q. And it is upon this letter that you relied in formulating the application of the new admissions policy?

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A. That is the means by which I officially found out about the change in the policy.

MR. WHITAKER: At this time, Your Honor, we do request the production of the letter. Mr. Taylor and I discussed this letter; according to Mr. Taylor, doesn't contain attorney-client information.

THE COURT: Well, let me see the letter.

MR. WHITAKER: I do not have it.

THE COURT: Well, I can't pass on the question of whether it's excluded or included until I see it.

MR. WALKER: Your Honor, I don't have it with me. As a matter of fact, Your Honor, we don't have it. We will get the copy and submit it to the Court.

THE COURT: All right.

MR. WHITAKER: We would ask Your Honor to consider the extent to which the letter should be made a part of the record.

THE COURT: I will.

MR. WHITAKER: There could be statements in there that reflect the intent and purpose behind the change of the policy, and we submit those would be disclosable.

Q. (By Mr. Whitaker) Concerning the academic standards of the university, one of the functions of you and your office would be to assure students, prospective students of the quality of education they could get at the university,

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would that be correct?

A. Yes, that's correct.

Q. And do you assure the applicant that the quality of education will be as good, if not better, than what they could get; for example, at the university of South Carolina?

A. We would be more specific than that in terms of what the applicant was looking for in the way of a major, but we would probably not do that on a comparative basis, since there would be ethical consideration there from our standpoint.

Q. But you would at least assure the applicants that a degree from Bob Jones University would enable one to proceed into the professional world?

A. On generally the same basis as they would from any other recognized school, yes, sir.

Q. And the admission application contains—that was in use prior to the change in policy in 1975, contains a blank for the applicant to fill in race, is that correct?

A. That's correct.

Q. And the admissions application after the change of policy in mid 1975, also has a blank for the applicant to fill in race?

A. Correct.

Q. After the change in admissions policy, in the middle of 1975, you did not take any steps with respect to publicizing

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the changed policy, except in response to specific inquiries?

A. Yes, sir, that would be correct. However, I think it should be kept in mind that that normally is our routine function in the publicizing area anyway.

Q. Concerning the admission policy, prior to 1971, and first, are you generally familiar with the change in policy which occurred in September of 1971?

A. Generally, yes, sir.

Q. And that policy was changed so as to admit or consider for admission married blacks?

A. Yes, sir.

Q. Prior to that change, what did your office do with an application which came in from a black person?

A. Our response in that case would be rather than to process the application, simply write to the applicant and explain our policy and return his application fee, which is submitted with the application.

Q. And after the change in 1971, from 1971 to 1975, during that period, if an application were received which indicated that the applicant was black and not married, what would the practice of your office be?

A. Essentially the same.

Q. Concerning the policy after it was changed in the middle of 1975, if the application form indicated that the applicant were black and was a participant—or the applicant's

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spouse were a member of another race, what would be the practice of your office?

A. The practice there again would be not to process the application and advise the applicant of our policy and return his application fee.

Q. Now, what if the application indicated the applicant were black and did not indicate the race of the spouse?

A. We would begin to process the applicant and request that additional information from the applicant.

Q. And if the additional information revealed that the spouse was black, the procedure would be to return the application?

A. I cannot answer that question specifically, because it never occurred. If the application revealed that the applicant was a member of an organization which advocated interracial marriage, what would your office do in response to the application?

A. I can't answer that question, since that particular thing is not indicated on the application. By that I mean that there is no question on the application that asks are you a member of such an organization.

Q. Would you look at the character reference to try to ascertain such?

A. We look at all character references. And if that were indicated on the character references, then some action

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would be taken.

Q. So, in a sense you depend on—to a great deal on the character references to reveal an indication that the applicant does not comport with the university's beliefs?

A. Are you asking that question in this area alone, or in any area?

Q. I will ask you first, just in general?

A. In a very general sense, yes, we rely very heavily on the character references.

Q. Now, in specific regard to advocating interracial marriage, belonging to a group which advocates interracial marriage, would you rely a great deal on the character references?

A. If that information were revealed to us on the character references, we would take action; however, there is nothing in our contact with the references which asks specifically for that type information from the references themselves.

Q. Are the character references frequently persons who have contact with the university such as alumni or pastors or religious members?

A. Yes, they are.

Q. The black student who is admitted in the fall of 1975, Mr. Christ, he was married, wasn't he?

A. Yes, sir, I believe he was.

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Q. So, he would have been considered for admission even before the policy was changed in mid '75?

A. He could very well have, had he applied prior to that time.

Q. Concerning the letters which are Exhibits 9 and 10, Defendant's Exhibits 9 and 10—

MR. WHITAKER: May I approach the Witness, Your Honor?

THE COURT: Yes, sir.

Q. (By Mr. Whitaker) Would you please examine Defendant's Exhibits 9 and 10, and especially the paragraph in the middle of the letters referring to race or admissions policies?

A. Yes, sir.

Q. And explain to us the difference between the letters. First—

A. You intend for me to read the differences?

Q. First, if you would explain why there are two letter in each package, in each exhibit.

A. There are two letters. One was used earlier than the other; in otherwords, one letter is an updated version of the other.

Q. Which one was the earlier letter, would that be Exhibit 10?

A. I need one moment to read through the information.

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Q. Excuse me.

A. I believe Exhibit 9 is the more current letter, and Exhibit 10 was an earlier letter.

Q. So, that Exhibit 10 contains a specific reference to the university's belief concerning interracial marriage? That was the earlier letter?

A. That's correct, I believe that's correct, to the best of my knowledge.

Q. And that letter would have been changed into what is Exhibit 9 sometimes after the change in admissions policy, is that correct?

A. I can't make a statement with respect to the timing of the change nor its proximity to the change in the admissions policy. I know it was changed and updated, but—

Q. Was it updated—

A. I'm not sure enough of the time frame to know when or what the thinking was behind it.

Q. Can you say whether it was updated after they changed the admissions policy?

A. I'm fairly certain it was updated after the change of admissions policy in 1975.

Q. And what generally are these letters?

A. These are letters sent from the Dean of Men's Office and Dean of Women's Office, which are included as a part or as in insert in the acceptance letter to the

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individual when a decision is made.

Q. So, even though it's written by the Dean of Men or Dean of Women, it would be sent out from your office along with the acceptance?

A. That's correct.

Q. In referring to Exhibit 11, a xerox of a pamphlet entitled, "Why Bob Jones University Was Founded"—and here is the original—would you please generally explain your office's function with regard to a pamphlet such as this?

A. Yes, sir. This pamphlet is occasionally sent out by our offices; in most instances where an applicant has inquired specifically about our membership in regional educational associations. It answers that question.

Q. Do you have other pamphlets and brochures which you send in response to an inquiry about the school?

A. Yes, sir, we do.

Q. And these other pamphlets and brochures would in a general sense describe the nature of the school?

A. Yes, sir.

Q. And the type of atmosphere that a prospective student could expect at the school?

A. Yes, sir.

MR. WHITAKER: No further questions, Your Honor.

THE COURT: All right.

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QUESTIONS BY MR. TAYLOR:

Q. Mr. Christ, first, in order to clarify in my mind, I believe Mr. Whitaker was asking you about publicity requirements. Is your office in charge of publicizing any university policies?

A. No, sir.

Q. Now, I believe at that time he was asking you about what your office did. Was that your understanding of the question he was asking you, concerning any publicity requirements of your office as opposed to the university as a whole?

A. That was my understanding.

Q. Mr. Christ, does your office segregate in any way applications being received on account of or by race?

A. No, sir.

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PLAINTIFF'S EXHIBIT 1

IS SEGREGATION SCRIPTURAL?

ADDRESS GIVEN OVER
RADIO STATION WMUU,

BOB JONES UNIVERSITY,
GREENVILLE, SOUTH CAROLINA

APRIL 17, 1960

(This address was mechanically recorded
and has not been edited.)

My friends, I am going to bring you today one of the most important and most timely messages I have ever brought. I hope you will sit close to the radio. Do not let anything disturb you. I want you to hear this message through.

Now, we folks at Bob Jones University believe that whatever the Bible says is so, and we believe it says certain fundamental things that all Bible-believing Christians accept; but when the Bible speaks clearly about any subject, that settles it. Men do not always agree, because some people are dumb—some people are spiritually dumb; but when the Bible is clear, there is not any reason why everybody should not accept it.

The Bible makes some things plain. It makes it plain how to be saved. We are saved by grace through faith in the atoning

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blood of Christ. The Bible makes it plain that man is naturally a sinner and that he has to become supernaturally a Christian—born again.

All orthodox, Bible-believing Christians agree on one thing; and that is, that whatever the Bible says is so. When they had old religious debates, they used to get together and say, "Well, we will discuss this subject." One man would say, "The Bible says this," and another man would say, "You are mistaken. It say this." They argued about what the Bible said. They agreed that whatever it said was so, but they argued about what it said.

In recent years there has been a subtle, Satanic effor to undermine people's faith in the Bible; and the devil has led the race along until men have put their own opinion above the Word of God. You will find that practically all the troubles we are having today have come out of the fact that men in many instances have ceased to believe in an authoritative Bible.

For instance, we are living in the midst of race turmoil all over the world today. Look at what they are facing in Africa, and look at what we are facing in this country. It is all contrary to Scripture—

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it is all contrary to the Word of God. I am going to show you that the Bible is perfectly clear on races—just as clear as it can be.

People come along say, "Well, God is the Father of everybody." No, He is not. God is the Father of born-again people. The Bible says this as clearly as it can be put in language. We are children of God by faith in Jesus Christ.

There is no trouble between a born-again white man and a born-again colored man or a born-again Chinese or a born-again Japanese. Born-again, Bible-believing Christians do not have trouble. They may not undersand some things; but when we give them the Word of God for it, they see it and understand it.

You know, we have gotten away from the Bible. Modern education came along and put the opinion of man above the Word of God, and man has come along and tried to give us an explanation. All you have to do is live up to the Word of God, and you will have no trouble about knowing how to meet life's problems.

What does God teach about the races of the world? If you will go to the seventeenth chapter of the Acts of the Apostles, you

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will find where Paul preached a special sermon on Mars Hill. Remember now, Athens was the center of culture. There are still fragments of the Athenian culture today in the museums over there; and you can walk around among the crumbled ruins. Paul was there. Paul was chosen of God (he was a Jew) to be the great apostle of the Gentiles. I think the greatest man who ever lived was Paul—I mean I think he was greater than Moses and greater than any other man who ever lived. Of course, I am not talking about the Lord Jesus Christ Who was God-Man. But to my mind, no other mere human ever reached the height of greatness that Paul reached. He was honored as God never honored any other man. He suffered as few men have ever had to suffer. He was misunderstood; but, oh, what man he was.

Paul tells us in his sermon on Mars Hill, "God that made the world and all things therein, seeing that he is Lord of heaven and earth, dwelleth not temples made with hands." Now, the statue of the Grecian goddess, Athena, was in the Parthenon; and Paul said that God did not dwell in buildings made with hands. "Neither is worshipped with men's hands, as though he needed any thing, seeing he giveth to all life, and breath, and all things."

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Now, notice—this is an important verse—the twenty-sixth verse of the seventeenth chapter of the Acts of the Apostles. "And hath made of one blood all nations of men for to dwell on all the face of the earth" (in some of the best original manuscripts, the word "blood" is not there; but it is not important anyhow, because the thoughts are the same). "And hath made of one blood all nations of men for to dwell on all the face of the earth. . . ." But do not stop there, ". . . and hath determined the times before appointed, and the bounds of their habitation." Now, what does that say? That says that God Almighty fixed the bounds of their habitation. That is as clear as anything that was ever said.

If you have a legal document and there is a paragraph that is clear and you come across an obscure passage, you interpret the obscure passage in the light of the clear passage. Any lawyer will tell you that. If he has a case in court, he will say, "Now, gentlemen of the jury, here is what this paragraph says. This one paragraph is not quite clear, but this other paragraph is clear; and we will interpret this in the light of the clear passage."

God almighty did not make of the human race one race in the sense that He did not fix the bounds of their habitation. That is

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perfectly clear. It is no accident that most Chinese are in China. There has been an overflow in the world, but most Chinese live in China. There are millions and millions of them there, and there are no greater people in the world. I have never known lovelier and more wonderful people than the Chinese.

We were over in Formosa a few years ago and conferred an honorary degree on Generalissimo Chiang Kai-

shek, and I never met a greater man. I never met a man of more intelligence or a more wonderful Christian; and Madame Chiang Kai-shek is a wonderful woman. There they are. Now, what happened? They married each other. She was a Christian Chinese woman educated in America. When she finished her education, she went back to her home in China. How God has used Generalissimo and Madame Chiang Kai-shek—not only as Christian witnesses but also in other ways. I was never with a man who pulled me to him with stronger ties than Generalissimo Chiang Kai-shek when I was over there and conferred an honorary degree on him. All right, he is a Chinese. He married a Chinese woman. That is the way God mean it to be.

Paul said that God ". . . hath made of one blood all nations of men . . . ." But

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He also fixed the bounds of their habitation. When nations break out of their boundaries and begin to do things contrary to the purpose of God and the directive will of God, they have trouble. The world is in turmoil today because men and nations go contrary to the clear teaching of the Word of God. Let's understand that. The Chinese people are wonderful people. They have internal troubles, of course, because Communism has gone into China and disturbed a great deal of the population. But the Chinese people are wonderful people. The Japanese people are ingenious—they are wonderful people. The Koreans are wonderful people. The Africans are wonderful people. In many ways, there are no people in the world finer than the colored people who were brought over here in slavery in days gone by.

You talk about a superior race and an inferior race and all that kind of situation. Wait a minute. No race is

inferior in the will of God. Get that clear. If a race is in the will of God, it is not inferior. It is a superior race. You cannot be superior to another race if your race is in the will of God and the other race is in the will of God. But the purposes of these races were established by Almighty God; and when man attempts to run contrary to the

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directive will of God for this world, there is always trouble. Now, that is the trouble.

What happened? Well, away back yonder our forefathers went over to Africa and brought the colored people back and sold them into slavery. That was wrong. But God overruled. When they came over here, many of them did not know the Bible and did not know about Jesus Christ; but they got converted. Some of the greatest preachers the world has ever known were colored preachers who were converted in slavery days. John Jasper was one of them. One of the greatest preachers who ever stood before an American audience was John Jasper. And Sam Jones, years ago down in Georgia, told us about an old, colored preacher down there. He said, "There is no man who ever stood on two legs who could preach like him."

God Almighty allowed these colored people to be turned here into the South and overruled what happened, and then He turned the colored people in the South into wonderful Christian people. For many years we have lived together. Occasionally there will be a flare-up. But the white people have helped the colored people build their churches, and we have gotten

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along together harmoniously and peacefully; and everything has come along fine. Sometimes we have a little

trouble, but then we adjust everything sensibly and get back to the established order. But the good white folks have always stood by their good colored friends, and the good colored folks have always stood by their good white friends. No two races ever lived as close together as the white people and the colored people here in the South and got along so well.

Now, what is the matter? There is an effort today to disturb the established order. Wait a minute. Listen, I am talking straight to you. White folks and colored folks, you listen to me. You cannot run over God's plan and God's established order without having trouble. God never meant to have one race. It was not His purpose at all. God has a purpose for each race. God Almighty may have overruled and permitted the slaves to come over to America so that the colored people could be the great missionaries to the Africans. They could have been. The white people in America would have helped pay their way over there. By the hundreds and hundreds they could have gone back to Africa and got the Africans converted after the slavery days were over.

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All right, now what is happening? Down in Africa there is trouble and turmoil. There is racial disturbance all over the world, and it is not of God. The Bible is clear on this. When people come along and say, "Well, God is the Father of everybody," they are wrong. He is not the Father of everybody. That is not in the Bible. That is a Satanic lie. Let me repeat, the Bible says as clearly as language can put it that people are children of God by faith in Jesus Christ. We are children of God by faith in Jesus Christ. That is what the Bible says. Let's take the Word of God and quit slandering the Word of God. We are children of God by faith in Jesus Christ. A born-again

white man and a born-again colored man can settle any differences they have. God is their Father. They are children of God by faith in Jesus Christ.

Individually, Christian people in the South—white and black—through the years have been able to work together and to understand each other. But now a world of outside agitation has been started, and people are coming in the name of piety, but it is a false piety, and are endeavoring to disturb God's established order; and we are having turmoil all over America. This disturbing movement is not of God. It is not in line with the Bible. It is Satanic.

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Now, listen and understand this. Do not let people lead you astray.

"Well," you say, "The colored folks have not been treated right." I agree with you. Neither have the poor white people been treated right. When I was a boy in Southeast Alabama, we lived in what was called the white section of the State. There were not many colored people there. The slaves were in the western part and in the mid-section of the State. Down in Southeast Alabama there were some slaves but not many; but they had the reconstruction days—hard days—and the time came along when people were having a hard time. Some white folks were not treated right. They paid 20 per cent interest on money. They were oppressed by people who had money. The colored people down in my country were treated just as well as the white people by businessmen. Any man who would mistreat a colored man would mistreat a white man. If he is mean enough to mistreat one man, he is mean enough to mistreat another.

You can go to any city in the country and find the poor people living in a certain section there. I do not say

that things are right. But things are not going to be made right by trying to overthrow God's

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established order. That is not the way to make things right. You cannot make them right that way. The colored people in the South today are better off than they are anywhere else in the world. The situation is not a perfect situation for the white folks or the colored folks or for anybody else; but we have never had a perfect situation in this world since Adam and Eve disobeyed God in the Garden of Eden.

I want you folks to listen—you white and you colored folks. Do not let these Satanic propagandists fool you. This agitation is not of God. It is of the devil. Do not let people slander God Almighty. God made it plain. God meant for Christian people to treat each other right. If you are a Christian white person or a Christian colored person, you will treat each other right. We Christians are children of God by faith in Jesus Christ. We are one in Christ; but let us remember that the God Who made of one blood all nations also fixed the boundaries of their habitations..

Yes, Paul said, "God . . . hath made of one blood all nations of men . . . ." All men, to whatever race they may belong, have immortal souls; but all men have mortal bodies, and God fixed the boundaries of the races of the world. Let me repeat

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that it is no accident that most of the Chinese live in China. It is not an accident that most Japanese live in Japan; and the Africans should have been left in Africa, and the Gospel should have been taken to them as God commanded His people to do.

Wherever we have the races mixed up in large numbers, we have trouble. They have trouble in New York. They have trouble in San Francisco. They have had trouble all over California. Back in the old days when I was a young fellow, Captain Richmond Pearson Hobson went up and down this country and lectured on the "yellow peril" and told us we were going to have trouble with Japan. He said there would be a war with Japan someday. People said, "Oh, well, he is crazy." Other leaders went over this country and lectured on the "yellow peril" and the dangers we were facing. Remember, we did have a war with Japan.

The best friends we have in many ways are in the Orient. There are millions of Chinese over there. Dr. Grace Haight, who used to be on our faculty and who was a missionary to China, told us that the Chinese were the best people in the world. Let me tell you something. When it comes to quality of races, all these races have

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quality. They have good qualities and bad qualities.

If we would just listen to the Word of God and not try to overthrow God's established order, we would not have any trouble. God never meant for America to be a melting pot to rub out the line between the nations. That was not God's purpose for this nation. When someone goes to overthrowing His established order and goes around preaching pious sermons about it, that makes me sick—for a man to stand up and preach sermons in this country and talk about rubbing out the line between the races—I say it makes me sick. I have had the sweetest fellowship with colored Christians, with yellow Christians, with red Christians, with all sorts of Christians—the sweetest fellowship anybody has ever had, we have had. Christians have always had it. We have never had any trouble about that.

The trouble today is a Satanic agitation striking back at God's established order. That is what is making trouble for us. Of course, it is easy to look back over the years and see the situation from another standpoint; but when the folks up North went to Africa and brought the slaves over to this country and sold them to the Southern

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people, the Southern people should have been Christian enough to have said, "We will not have any slaves. We are not going ahead." But, you know, they went ahead.

Only a small percentage of the Southern people held slaves. Only a small percentage of them were slave owners. A great many people in the South in the old days did not believe in slavery—they stood against slavery. But they went ahead, and the commercial element was dominant; and people bought slaves and sold them. This slavery was not right. It should not have been. What we should have done was to have sent missionaries to Africa. Yes, that is what we should have done. That would have been in line with Scripture.

God put the Africans over there. They are fine people. They are intelligent people. Do not think they are inferior in every way. It is not so. But we should have sent missionaries over there, and Africa should have been a great nation of colored Christians. If we had done what God had told us to do and sent the Gospel to them and made a Christian nation out of them instead of bringing them over here and selling them into slavery, Africa could have been a great nation of colored Christians. What we did was wrong. It was not right.

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It cannot be justified. We should not try to justify it. But people went along. Some good people fell for it and went ahead with it; and God overruled it.

I will venture there is not a population in the world where there is a larger percentage of professing Christians than among the colored people in the South. We Christian white people all have good friends among the colored people. The colored Christian people are sensing the dangers we are facing now. There is already an uprising among good, Christian colored people in the South. They are trying to fight back the subtle, Satanic disturbance we have in this country.

There has never been a time, especially in the last ten years, when the white people in the South were so eager to help the colored people build their schools and see that they get what they ought to have. All this agitation going on is not headed up by real, Bible-believing, Christian people.

These religious liberals are the worst infidels in many ways in the country; and some of them are filling pulpits down South. They do not believe the Bible any longer; so it does not do any good to quote it to them. They have gone over to modernism, and they are leading the white

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people astray at the same time; and they are leading colored Christians astray. But every good, substantial, Bible-believing, intelligent, orthodox Christian can read the Word of God and know that what is happening in the South now is not of God.

God gave every race something. He gave the Africans something. He gave the Chinese something that he did not give the Japanese. He gave races certain things. He chose the Jews. They are the most wonderful people who ever lived in the world. God chose them; and God segregated them, not because they were inferior but because He had a purpose for that race.

God Almighty had a purpose for the Jewish race; and for that purpose to be carried out, He had to separate

them from among the nations of the earth. God chose Israel; and through the loins of Israel, He brought us the Messiah. He gave us the Bible through Israel. The Jews have outlived all the nations. They have been scattered over the face of the earth, and they have kept their racial identity through the years. You will find the Jew in London, the Jew in New York, the Jew in San Francisco, the Jew in Tokyo, the Jew in Hong Kong. I congratulate them. I am a friend of the Jew. I believe that the

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Covenant that God made with Abraham holds good until this day, "I will bless them that bless thee and curse him that curseth thee . . . ."

The Jews are back in Palestine with a Government today. God scattered them, but He brought them back to their homeland. I am for them, and I am for their homeland and for their Government. I do not agree with them about Jesus. I know Jesus Christ was the Son of God; and I know that when Jesus Christ comes back again, He will be the King of the Jews and will be accepted, and a nation will be born in a day, and Jerusalem will be the capital of the world. That is all in the Bible. It is clear as day.

Yes, God chose the Jews. If you are against segregation and against racial separation, then you are against God Almighty because He made racial separation in order to preserve the race through whom He could send the Messiah and through whom He could send the Bible. God is the author of segregation. God is the author of Jewish separation and Gentile separation and Japanese separation. God made of one blood all nations, but He also drew the boundary lines between races.

Of course, in America we do not have a serious problem with the Orient. If we

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had as many Chinese and Japanese as we have colored people in the South, we would run into the same problem; but we have no Oriental problem here in the South.

Some of the most wonderful people in the world are Chinese and some are Japanese; and some of the most wonderful people who ever breathed the breath of life are colored people. Every one of you white folks who are listening to me now have colored friends. I have, and I would fight for them; and you would, too. It has always been that way. Individually, we are friends. Racially, we are not at enmity; but we are separate races. We have lived here in the South through these years.

After the Civil War the colored people wanted to build their schools and churches, and white friends made financial contribution to the building of these schools and churches. Back in those days it was not easy when the white folks were paying most of the taxes—don't you colored friends forget when you are inclined to turn away from your white friends. You colored people might also remember that your ancestors in the South who were slaves breathed an atmosphere of culture back in those pre-Civil War days. Think of what your ancestors received in such an atmosphere. Think of the religion that they

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learned and how they found God in slavery days. Think of those old white preachers who preached to your colored ancestors when they were slaves.

Now listen, the time has come when we ought to sit down and go to thinking some things through in this country. And you colored people listening to me and you white people listening to me ought to keep your heads cool and your minds clear and your hearts warm

and keep up these friendly relations we have had through the years. Do not let this outside, Communistic, Hellish influence disturb the friendly relation we have had in the South. The situation in the South had been better in recent years than it had ever been; and all of this agitation is going to set this country back in the South for twenty-five to fifty years. We are headed that way. We ought to rise up and begin to face this thing like we ought to face it as neighbors and friends. Every one of you colored people know your white friends. All you white people know your colored friends. We have some of them, and we would not let anybody mistreat them if we could help it; and they would not let anybody mistreat us. It has always been that way in the South.

But racially, we have separation in the Bible. Let's get that clear. Any race has

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a right to come to America. We do not mean that when we came over here we wiped out the line between races. We did not do that. We should have let the Africans stay in Africa instead of bringing them here for slaves, but did you colored people ever stop to think where you might have been if that had not happened? Now, you colored people listen to me. If you had not been brought over here and if your grandparents in slavery days had not heard that great preaching, you might not even be a Christian. You might be over there in the jungles of Africa today, unsaved. But you are here in America where you have your own schools and your own churches and your own liberties and your own rights, with certain restrictions that God almighty put about you—restrictions that are in line with the Word of God. The Jews have lived a separated race. They have been separated from the other races of the world. They have been miraculously preserved. Now they have a homeland. They are

back there today, and what a wonderful thing is happening.

The time has come when we good folks down here in the South—the good colored people and the good white people—need to use our heads. We should not let this outside agitation disturb us down here.

[22]

Now, listen just a minute. You colored people are entitled to good schools. You ought to have them. I would like for you to remember something. Just remember that the South went through reconstruction and had a hard time. It was not easy. Then remember something else, too. When your ancestors were slaves in the homes of these Southern people, they got a breath of culture that they could not have gotten even in the schoolrooms of America. They heard the old-time preachers. I have said many times that the greatest preachers who have lived since the Apostolic days were the preachers of the South—the preachers who preached to the colored people. And back there the slaves had the Gospel. They heard it and were converted. They were saved.

Many of these slave owners were godly, spiritual people. I remember hearing about when John Jasper was converted at a corn husking and began to shout. His master said, "John, what is the matter?" He said, "I have just been converted—been saved." "Well," he said, "I am a Christian, too. We are brothers." They shook hands. He said, "Now, John, you take a day off and go around and tell all the colored folks how you found the Lord. Take a day off and tell them."

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Back in the old days when I began to preach, over sixty years ago, nearly every church I went to had a few

old colored people who never did leave. They said, "We want to stay here. We got converted here and want to stay here." They were encouraged, and the white people helped build their churches. They stood by them through the years.

Now, you intelligent-thinking colored people know that you are with your friends. Do not lose your friends. Your friends are not somewhere else. They are right down here in this country. Remember that now.

I have no axe to grind. I would like to tell you something. We had planned to build a school, just like Bob Jones University, here in the South for colored people. We wanted to build it. But we have run into this agitation now that makes it difficult, and the years are piling up. I do not suppose I will ever be able to build it. We wanted to build a great school where colored people could come and get all the culture that we offer here at Bob Jones University. We would not have faced the problems that are faced where there is integration. We wanted to build a place where Christian colored people could get their education in an atmosphere where

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their talents in music and speech and art and all could be preserved and handed down. We wanted to build that kind of a school. We had that in mind until all this agitation started. Now we have a mess on our heads, and it is spreading out over this country.

You white folks listen to me. Just remember the good, old, colored friends you had in the days gone by. I remember mine. I remember that old, colored woman who was with my wife's grandmother when she died. She used to be a nurse in the home way back in slavery days. I remember how my wife's grandmother said the happiest day she ever saw was when the slaves were freed. She owned hundreds of them, and she said, "I was so happy.

I was afraid some of them would be lost; and I felt that God might hold me accountable." That spirit represented the Old South.

You say slavery was not right. Well, I say it was not right. I say the colored people should have been left over in Africa, and we should have sent missionaries over there and got them converted. That is what we should have done. But we could not have converted them as fast that way and God makes the wrath of men to praise

[25]

Him. They were brought over here, and look what they have. They have their churches. They have a freedom here they do not have anywhere else in the world. They have an understanding here. Let's not wipe out the line of understanding.

Now, I am appealing to you colored people and to you white people. Let's use our heads. Let's be intelligent. Let's not try to kick the Bible off the center table. Keep your Bible where it belongs. When they tell you that God Almighty is not the author of the boundaries of nations, you tell them that is wrong. You tell them it is perfectly clear in the Bible that God made of one blood all nations but that He also fixed the bounds of their habitation. There is nothing unscriptural about that.

Listen just a minute. We are trying to bring a few people from other lands here to Bob Jones University so we can educate them and help them. We have two Chinese gentlemen teaching here in this school. They are Christian men. They are intelligent men, and they understand what we are doing. They know where we are going. We honor them and respect them.

There is no problem here. But it could be a problem. It could be a problem in California. It could be a problem anywhere.

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Whenever you get a situation that rubs out the line that God has drawn between races, whenever that happens, you are going to have trouble. That is what is happening today in this country. All this agitation is a Communistic agitation to overthrow the established order of God in this world. The Communistic influence is at work all about us. Certain people are disturbing this situation. They talk about the fact that we are going to have one world. We will never really have one world until this world heads up in God. We are not going to have one world by man's rubbing out the line that God has established. He is marking the lines, and you cannot rub them out and get away with it.

The established order cannot be overthrown without having trouble. That is what wrecked Paradise. God set up the order of Paradise. He told Adam and Eve how to live and what food to eat and what not to eat. He drew the lines around that Garden; and when Adam and Eve crossed over the lines of God, thorns grew on roses. The first baby that was born was a murderer and killed his own brother. So it has gone down through the ages. It is man's rebellion (due to the fall) against a Holy God to overthrow the established order of God in this world.

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Now I can sit down with any Christian Japanese, any Christian Chinese, any Christian African, etc., anywhere in the world and as a Christian have fellowship. That is a different relationship. A Christian relationship does not mean a marriage relationship. You can be a Christian and have fellowship with people that you would not marry and that God does not want you to marry and that if you should marry you would be marrying outside the will of God. Why can't you see that? Why can't good, solid,

substantial people who do not have any prejudices and do not have any hatred and do not have any bitterness see this? Let's approach this thing in a Christian way. Let's make the battle a Christian battle. Do not let people run over you by coming along and talking about the Universal Fatherhood of God and the Universal Brotherhood of man. There is no Universal Fatherhood of God and Universal Brotherhood of man. There is not a word about that in the Bible.

We have three classes in the Bible. We have the Jew (a segregated race), the Gentile (and this includes everybody else), and the Church of God (meaning the Body of Christ, as it is used here). In the Church of God there are no Jews, no Gentiles, no white folks, no black folks. We are one in Christ. There is no trouble between a colored

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Christian and a white Christian. They operate as individuals and deal with each other as Christians who have their citizenship in Heaven. Up in Heaven there will be no boundaries. We will be one forever with Christ. But we are not one down here, as far as race is concerned and as far as nations are concerned. God said so, and Paul made it clear when he preached at Athens in the midst of Athenian culture. He said that God ". . . hath made of one blood all nations of men . . . ." But God has also done something else. He has fixed the bounds of their habitations.

A lot of this agitation comes from evangelists of a certain type who have never gone into this situation but who are going up and down rubbing out the line between those who believe the Bible is the Word of God and those who believe the Bible just contains or may contain the Word of God. They do not get all of this "hot-air" stuff

out of the Bible. It is not in the Bible. It is nothing in the world but "hot-air" glamour with a sentimental, soap-bubble, anemic kind of a religion that is not in the Word of God.

I have been in this business all these years. I know something about it. I know what the Word of God teaches. I know

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what the great evangelists believed. I know how they stood through the years. We are facing serious dangers today—more serious than we can ever imagine. May God help us to see it and understand it and to be true to Him.

When you run into conflict with God's established order racially, you have trouble. You do not produce harmony. You produce destruction and trouble, and this nation is in the greatest danger it has ever been in in its history. We are facing dangers from abroad and dangers at home, and the reason is that we have got away from the Bible of our forefathers. The best Christians who ever put foot on this earth since the Apostolic days were the men and women in America back in the old days. Some of them owned slaves, and some of them did not; and some of them were slaves, and some of them were not. Back in those days they believed the Bible, and God called this nation into existence to be a witness to the world and to be true to the Word of God. Do not let these religious liberals blowing their bubbles of nothing over your head get you upset and disturbed. Let's get back to the Word of God and be sensible.

You white folks and you black folks listening to me this morning, if you are

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Christians, we are one in Christ. If you are yellow or red or whoever you are, if you are Christians, we are one in

Christ. We can get along together as Christians, and we had better stand together as Christians.

You preachers, listen to me. I know what is going on. We are facing dangers in America. Enemies are being made now that are dividing this country as it has never been divided in its history. We are facing the greatest dangers we have ever faced, and the religious liberals are riding in now on the crest of a wave of what seems to be popular.

If you are a Christian, you are not going to mistreat anybody. You will not mistreat a colored man or a white man or anybody else. Individually, we are one in Christ; but God has also fixed the boundaries of nations, and these lines cannot be rubbed out without having trouble. The darkest day the world has ever known will be when we have one world like they are talking about now. The line will be rubbed out, and the Antichrist will take over and sit down on the throne and rule the world for a little while; and there will be judgment and the cataclysmic curses found in the book of Revelation. We are going to face all this.

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May God help us to see it and to be true and faithful to Him.

"Our heavenly Father, bless our country. We thank Thee for our ancestors. We thank Thee for the good, Christian people—white and black. We thank Thee for the ties that have bound these Christian white people and Christian colored people together through the years, and we thank Thee that white people who had a little more money helped them build their churches and stood by them and when they got sick, they helped them. No nation has ever prospered or been blessed like the colored people in the South. Help these colored Christians not

to get swept away by all the propaganda that is being put out now. Help us to see this thing and to understand God's established order and to be one in Christ and to understand that God has fixed the boundaries of the nations so we would not have trouble and misunderstanding. Keep us by Thy power and use us for Thy glory, for Jesus' sake. Amen."

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PLAINTIFF'S EXHIBIT 2

Book 467 Page 395

The State of South Carolina
EXECUTIVE DEPARTMENT

Certificate of Incorporation
By the Secretary of State

WHEREAS, Dr. Bob Jones, Sr., Dr. Bob Jones, Jr., R. K. Johnson, and James H. Price, all of Greenville, S. C. and R. C. McCall of Easley, S. C., and R. L. McKenzie of Panama City, Florida, and Robert Baker, of Mobile, Alabama two or more of the officers or agents appointed to supervise or manage the affairs of

BOB JONES UNIVERSITY, INC.,
OF GREENVILLE, S. C.

which has been duly and regularly organized, did on the 20th day of November, A. D. 1952 file with the Secretary of State a written declaration setting forth:

That, at a meeting of the aforesaid organization held pursuant to the by-laws or regulations of the said organization, they were authorized and directed to apply for incorporation.

That, the said organization holds, or desires to hold, property in common for Religious, Educational, Social, Fraternal, Charitable or other eleemosynary purposes, or any two or more of said purposes, and is not organized

for the purpose of profit or gain to the members, otherwise than is above stated, nor for the insurance of life, health, accident or property; and that three days' notice in the Greenville Piedmont, a newspaper published in the County of Greenville, has been given that the aforesaid Declaration would be filed.

AND WHEREAS, Said Declarants and Petitioners further declared and affirmed:

FIRST: Their names and residences are as above given.

SECOND: The name of the proposed corporation is

BOB JONES UNIVERSITY, INC.,
OF GREENVILLE, S. C.

THIRD: The place at which it proposes to have its headquarters or be located is GREENVILLE, S. C.

FOURTH: The purpose of the said proposed Corporation is

> "The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures, combating all atheistic, agnostic, pagan and so-called scientific adulterations of the Gospel, unqualifiedly affirming and teaching the inspiration of the Bible (both Old and New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Savior, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regen-

eration by the Holy Spirit, and the gift of eternal life by the grace of God."

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FIFTH: The names and residences of all Managers, Trustees, Directors or other officers are as follows:

Dr. Bob Jones, Jr., Greenville, S. C., President

Dr. Bob Jones, Sr., Greenville, S. C., Chairman Board of Trustees

R. K. Johnson, Greenville, S. C., Secretary and Treasurer

SIXTH: That they desire to be incorporated: in perpetuity.

Now, Therefore, I, O. Frank Thornton, Secretary of State, by virtue of the authority in me vested, by Chapter 158, Article III, Code of 1942, and Acts amendatory thereto, do hereby declare the said organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by said Chapter 158, Article III, Section 8158-8159 and 8168, Code of 1942, and Acts amendatory thereto.

GIVEN under my hand and the seal of the State, at Columbia, this 20th day of November in the year of our Lord one thousand nine hundred and fifty-two and in the one hundred and seventy-seventh year of the Independence of the United States of America.

(signature) O. Frank Thornton
Secretary of State

[Seal]

Recorded November 28, 1952 at 11:36 A. M. # 26318

Department of State
SOUTH CAROLINA
of the

.....

CERTIFICATE OF INCORPORATION

.....

.....

.....

Filed for record in the office of the (illegible) for Greenville, County, S. C. at 11:36 o'clock A. M. November 28, 1952 and recorded in Deed Book 467 at page 395

(signature)
.....

(illegible)
By .....

O. FRANK THORNTON,
Secretary of State

PLAINTIFF'S EXHIBIT 3

BOB JONES UNIVERSITY

Greenville, South Carolina
Telephone (803) 242-5100 Ext. 255

APPLICATION FOR ADMISSION

Do Not Write in This Space

Date ..... By .....

.....

Attn. of .....

Attd. to .....

.....

Checked .....

Full Legal Name .....
Last

.....
First Middle (Name by which called)

Check semester for which you are making application.

- ☐ Fall 19....
- ☐ Spring 19....
- ☐ First Summer Session 19....
- ☐ Second Summer Session 19....
- ☐ Special Summer Session 19.... (Dates.....)

Are you applying for a dormitory reservation? .....

(All students under twenty-three years of age must live in the University dormitories unless they are married or live nearby with close relatives.)

Social Security Number ..... Telephone .....
Area Code Number

Race ..... Sex ..... Citizenship (country) .....

Place of Birth .....Date of Birth .....
City State

Present mailing address .....
Number, Street City State Zip Code

Permanent home address .....
Number, Street City State Zip Code

Father's name .....
(Indicate deceased if not living)

Permanent Address .....

Mother's name .....
(Indicate deceased if not living)

Permanent Address .....

Have you ever been a student in Bob Jones University, Academy, or Institute of Christian Service? .....

If so, when? .....

Check your present marital status: Single ☐ Married ☐

Widow or Widower ☐ Divorced and remarried ☐

If your status is single, have you ever been married?

Yes ☐ No ☐ *If answer to this question is affirmative, letter of explanation must accompany the application.*

Do you plan to be married before time of enrollment?

Yes ☐ No ☐ If you are married (or will be before enrollment), give wife's or husband's name. .....

Has she or he ever been enrolled in Bob Jones University, Academy, or Institute? Yes ☐ No ☐

If you are a married woman, give full maiden name. .....
Give names of members of your immediate family who have attended Bob Jones University, Academy, or

Institute. .....
Names Relationship Name Relationship

Are you a church member?..If so, what denomination?..

Do you attend church regularly?.....If so, where?.....

Name of pastor ..... Address .....

Please list below as references three persons who are well acquainted with you, not including your pastor, relatives, or former teachers:

Name .....

Complete Address .....

Name .....

Complete Address .....

Name .....

Complete Address .....

Are you now or have you ever been under the supervision of a parole officer or under the custody of a juvenile or other court? .... Have you ever had a police record? ....

If so, give dates. .....

If answer to either of the above questions is affirmative, give full information, including the names and address of the judge or probation officer, on a separate sheet of paper.

Have you ever served in the United States Armed Forces? .... If so, give the dates: from ..... to ..... If you have been separated from such service, state the nature of such separation, and, if other than honorable, specify the type thereof and the circumstances of your release. .....

.....

.....

If you have not yet been separated, state your expected date of release. .....

EDUCATIONAL

High School Record

Is your high school work still in progress? .....

When will you be graduated? .....

Are you a high school graduate? ..... If so, give exact date diploma conferred. .....

Name and address of high school you are now attending or of last high school in which you were enrolled.

.....

Number, Street ..... City .....

State ..... Zip Code .....

List any other high schools you have attended and give the addresses.

.....

.....

American College Test

Have you taken the ACT? ..... If so, have the results been sent *directly* to Bob Jones University? .....

It is each applicant's responsibility to take the ACT and to request that his scores be sent to Bob Jones University directly from the American College Testing Program This must be done prior to the student's actual enrollment unless special permission has been received from the Director of Admissions to meet this requirement after enrollment.

College Level Record

List all colleges, Bible institutes, professional, and technical schools you have ever attended whether or not you received any credit. Please be sure to use full, official name of school and give complete address.

(1) .....
Name of School Dates of Attendance Approx. No. Credits (Degree Received)

.....
Complete Address

(2) .....
Name of School Dates of Attendance Approx. No. Credits (Degree Received)

.....
Complete Address

(3) .....
Name of School Dates of Attendance Approx. No. Credits (Degree Received)

.....
Complete Address

(4) .....
Name of School Dates of Attendance Approx. No. Credits (Degree Received)

.....
Complete Address

Transcripts of the record of any applicant transferring to Bob Jones University from another institution of higher learning will be required. Applicant must request the institution from which he is transferring to mail a copy of his transcript directly to Bob Jones University. Transcripts are accepted only when sent directly from the institution formerly attended. No reservation is final until all such transcripts are received.

Were you ever expelled, dropped, or suspended by any school or college? Yes ☐ No ☐ *If answer is affirmative, state details, including name of school, time, and reason for such action, on separate sheet of paper.*

Circle major: check school if major not indicated (one only):

☐ No school; no major ☐ Major not offered at B. J. U.

College of Arts and Science
110 Humanities
115 English
120 French
125 German
130 Spanish
140 Premed
150 Biology
155 Chemistry
160 Mathematics
165 Home Economics
170 Nursing
180 Prelaw
190 History

School of Religion
215 Bible
220 Church Adm.
222 Pastoral Studies
225 Christian Missions
230 Medical Missions
240 Master of Divinity
245 M.A. Bible
250 Ph.D. O. T. Interp.
251 Ph.D. O. T. Text
255 Ph.D. N. T. Interp.
255 Ph.D. N. T. Text
260 M.A. Pastoral Studies
265 M.A. Church Adm.
270 Ph.D. Church Adm.
275 M.A. Theology
280 Ph.D. Theology
285 M.A. Church History
290 Ph.D. Church History

School of Fine Arts
310 Art
315 Sacred Music
320 Piano
321 Piano Pedagogy
325 Voice
330 Organ
335 Instrument
340 Interpretative Speech
345 Public Speaking
350 Dramatic Production

355 Radio-Television
360 Broadcast Engineering
365 Cinema
370 M.A. Radio-Television
371 M.A. Broadcast Mgmt.
375 M.A. Art
380 M.A. Sacred Music
381 M.A. Organ
382 M.A. Piano
383 M.A. String
384 M.A. Voice
385 M.A. Interp. Speech
386 M.A. Platform Arts
387 M.A. Public Speaking
388 M.A. Dramatic Production
390 M.F.A.
395 M.A. Cinema

School of Education
405 Elementary Education
410 Secondary Education—special permission only
415 Art Education
420 Business Education
425 English Education
427 Health and Physical Education
430 Home Economics Education
435 Language Education
440 Mathematics Education
445 Music Education
460 Science Education
470 Social Studies Education
480 Speech Education
490 M.S. Educational Adm. and Supervision
491 M.S. Personnel Services
493 M.Ed. Elementary Education
494 M.Ed. Teaching English
495 M.Ed. Science
496 M.Ed. Mathematics
498 M.Ed. Physical Education
499 M.Ed. History

School of Business Administration
520 Accounting
540 Management
580 Office Adm.
590 One-Year Business
595 Two-Year Church Secretarial

Classification you expect to have:
(circle one)
Freshman
Sophomore
Junior
Senior
Special (undergraduate)
Graduate (degree candidate)
Postgraduate Special
Part-time

Have you made application for admission to any other institution—or institutions—for the same period covered by this application to Bob Jones University? Yes ☐ No ☐ If so, list below all institutions to which you have applied and indicate after the name of each institution whether your application was (1) Accepted (2) Rejected (3) Pending.

.....

.....

.....

Are you *now holding* a reservation in any of the above institutions? Yes ☐ No ☐ If so, which ones?

.....

.....

.....

Note: In the opinion of Bob Jones University, it is not honorable to hold a reservation in any institution unless you definitely expect to attend. You cannot attend more than one institution.

Should you meet all our entrance requirements, we would not under any circumstances hold a reservation for you unless you sign the following statement:

> I declare and affirm on my honor that I am not holding any reservations for admission to any educational institutions except such as may be listed above. I am making application to Bob Jones University because it is of all institutions the one I wish most to attend. If accepted, I pledge that I will within 48

hours cancel all reservations elsewhere. I promise and affirm that I will *not make application* for admission to any other institution without first canceling my reservation at Bob Jones University.

.....
Signature

EDUCATIONAL OBJECTIVE

Please use the space below to write in your own words your educational objective and purpose in life.

.....

.....

.....

.....

HEALTH

A medical record must be in our files before a student is finally and definitely accepted. This information is secured by means of a questionnaire which will be provided to each applicant after his application has been submitted. Several laboratory and x-ray procedures will be administered upon the student's arrival on our campus.

Have you any serious handicap? .... Please explain. .... Have you ever been treated for any nervous, mental, or emotional disorder? ..... If so, over how long a period? ..... and when? ..... Give name and address of attending physician or psychiatrist. .....

Have you ever used narcotics or dangerous drugs? .....
If so, please state on separate sheet of paper the drugs used, dates used, frequency, and the last date you used them.

FINANCIAL RESPONSIBILITY

I hereby make application for admission to Bob Jones University and enclose the $10 application fee with the understanding that the fee will be retained to cover the cost of processing my application. I understand that my application will be processed and I will be notified when my records are ready to be submitted to the Admissions Committee. Three weeks from the time I receive such notification I will pay the $50 matriculation fee, which is refundable only if later information forces the University to refuse my application.

Since the University will be holding a place for me if I am accepted, and possibly will turn away other applicants, I hereby acknowledge that unless I cancel my reservation at least 48 hours before the formal opening of the semester for which application is made, I will owe and will pay promptly the entire semester's tuition and one month's room and board. If I leave before the end of a semester for any reason whatever (either voluntary withdrawal or expulsion), I will owe the tuition and fees for the semester and the room and board through the current school month. If I do not cancel my reservation for the second semester by 48 hours prior to the opening of the second semester, I will owe the tuition and fees plus one month's room and board. This agreement carries over from year to year. If I should be accepted, I agree to give cheerful and ready obedience and to cooperate with the spirit and regulations of the University.

I hereby declare on my word of honor that I have not omitted the name of any school in which I was ever registered, even for a brief period, and that I have answered all of the questions on this application truthfully and fully. Further, I give to the University my approval to gather data from all schools which I have attended, together with other records and references that it believes to be necessary for the processing of my application.

....
Date Signature of Applicant

The parent or legal *guardian of the student making application must sign in the space provided below unless the applicant is over twenty-one years of age.*

As parent or legal guardian of the above applicant, I agree to cooperate with Bob Jones University in the enforcement of the rules and regulations of the institution and to meet the terms of the agreement about expenses, business details, etc., as outlined by Bob Jones University.

.....
Signature of Parent or Legal Guardian

If signature is that of legal guardian, the following information is necessary:

Name of Guardian ..... Address .....

IMPORTANT

It is understood that attendance at Bob Jones University is a privilege and not a right, which privilege may be forfeited by any student who does not conform to the standards and regulations of the institution, and that the University may request the withdrawal of any student at

any time, who, in the opinion of the University, does not fit into the spirit of the institution, regardless of whether or not he conforms to the specific rules and regulations of the University.

PLEASE CHECK APPLICATION CAREFULLY.
ALL QUESTIONS MUST BE ANSWERED AND APPLICATION FEE MUST BE SUBMITTED BEFORE APPLICATION CAN BE CONSIDERED OR PROCESSED.

BOB JONES UNIVERSITY
Greenville, South Carolina 29614
(803) 242-5100

APPLICATION FOR RE-ENROLLMENT

Do Not Write in This Space
Date ..... By .....
.....
Attn. of .....
Attd. to .....
.....
Checked .....

Full Legal Name .....
Last

.....
First Middle (If married woman, please give full maiden name as well as husband's initials.)

Check semester for which you are making application.

☐ Fall 19....
☐ Spring 19....
☐ First Session Summer 19....
☐ Second Session Summer 19....
☐ Special Session Summer 19.... (Dates .....)

Are you applying for a dormitory reservation? .....

(All students under twenty-five years of age must live in the University dormitories unless they are married or live nearby with close relatives.)

Date of Birth ..... Sex ..... Telephone .....
Area Code Number

Present Address .....
Number Street City State Zip

Permanent Home Address .....
Number Street City State Zip

When were you last enrolled in Bob Jones University or Bob Jones Academy or Institute of Christian Service? .... What classification did you have when you were last enrolled? .....

Circle major: check school if major not indicated (one only):

☐ No school; no major ☐ Major not offered at B. J. U.

College of Arts and Science
110 Humanities
115 English
120 French
125 German
130 Spanish
140 Premed
150 Biology
155 Chemistry
160 Mathematics
165 Home Economics
170 Nursing
180 Prelaw
190 History

School of Religion
210 Practical Christian Training
215 Bible
220 Church Adm.
222 Pastoral Studies
225 Christian Missions
230 Medical Missions
240 Master of Divinity
245 M.A. Bible
250 Ph.D. O. T. Interp.
251 Ph.D. O. T. Text
255 Ph.D. N. T. Interp.
256 Ph.D. N. T. Text
260 M.A. Pastoral Studies
265 M.A. Church Adm.
270 Ph.D. Church Adm.
275 M.A. Theology
280 Ph.D. Theology
285 M.A. Church History
290 Ph.D. Church History

School of Fine Arts
310 Art
315 Sacred Music
320 Piano
325 Voice
330 Organ

335 Instrument
340 Interpretative Speech
345 Public Speaking
350 Dramatic Production
355 Radio-Television
360 Broadcast Engineering
365 Cinema
370 M.A. Radio-Television
371 M.A. Broadcast Mgmt.
375 M.A. Art
380 M.A. Sacred Music
381 M.A. Organ
382 M.A. Piano
383 M.A. String
384 M.A. Voice
385 M.A. Interp. Speech
386 M.A. Platform Arts
387 M.A. Public Speaking
388 M.A. Dramatic Production
390 M.F.A.
395 M.A. Cinema

School of Education
405 Elementary Education
410 Secondary Education—special permission only
415 Art Education
420 Business Education
425 English Education
427 Health and Physical Education
430 Home Economics Education
435 Language Education
440 Mathematics Education
445 Music Education
460 Science Education
470 Social Studies Education
480 Speech Education
490 M.S. Educational Adm.

School of Business Administration
520 Accounting
540 Management
560 Marketing
580 Office Adm.
590 One-Year Business
595 Two-Year Church Secretarial

CHECK CLASSIFICATION AND CIRCLE MAJOR:

ACADEMY		UNIVERSITY	
9th Grade	☐	Freshman	☐
10th Grade	☐	Sophomore	☐
11th Grade	☐	Junior	☐
12th Grade	☐	Senior	☐

OTHER

Institute of Christian Service	☐	Postgraduate Special	☐
Graduate	☐	Undergraduate Special	☐
Graduate Assistant	☐	Part-time	☐

CHECK PRESENT MARITAL STATUS: Single ☐ Married ☐
Widow or Widower ☐ Divorced and Remarried ☐

Have you ever been married? Yes ☐ No ☐

Do you plant to be married before time of enrollment?
Yes ☐ No ☐

If answer is yes, please provide following information:

Name of person .....

Has (he, she) ever attended Bob Jones University,

Academy, or Institute of Christian Service? .....

If so, when? .....

I have attended the following schools since last enrolled in Bob Jones University, Academy, or Institute of Christian Service:

.....
Name Address Date of attendance

.....
Name Address Date of attendance

Transcripts of the record of any applicant transferring to Bob Jones University from another institution of higher learning will be required. Applicant must request the institution from which he is transferring to mail a copy of his transcript directly to Bob Jones University. Transcripts are accepted only when sent directly from the institution formerly attended. No reservation is final until all such transcripts are received.

Were you ever expelled, dropped, or suspended by any school or college? Yes ☐ No ☐ *If answer is affirmative, state details, including name of school, time, and reason for such action, on separate sheet of paper.*

Have you ever served in the United States Armed Forces?

..... If so, give the dates: from ..... to .....

Did you receive an honorable discharge? .....

Have you made application for admission to any other institution—or institutions—for the same period covered by this application to Bob Jones University? Yes ☐ No ☐

If so, list below all institutions to which you have applied and indicate after the name of each institution whether your application was (1) Accepted (2) Rejected (3) Pending.

Are you now holding a reservation in any of the above institutions? Yes ☐ No ☐

If so, which ones? .....

Note: In the opinion of Bob Jones University, it is not honorable to hold a reservation in any institution unless you definitely expect to attend. You cannot attend more than one institution.

Should you meet all our entrance requirements, we would not under any circumstances hold a reservation for you unless you sign the following statement:

> I declare and affirm on my honor that I am not holding any reservations for admission to any educational institutions except such as may be listed above. I am making application to Bob Jones University because it is of all institutions the one I wish most to attend. If accepted, I

pledge that I will within 48 hours cancel all reservations elsewhere. I promise and affirm that I will not make application for admission to any other institution without first canceling my reservation at Bob Jones University.

.....
Signature

Have you been treated for any nervous, mental, or emotional disorder since last enrolled? .....

If so, over how long a period ..... and when? .....

Give name and address of attending physician or psychiatrist. .....

Have you used narcotics or dangerous drugs since last enrolled? .....

If so, please state on separate sheet of paper the drugs used; dates used, frequency, and the last date you used them.

It is my desire and purpose to return to Bob Jones University for the semester indicated on this form. If I am accepted as a student, I solemnly promise to be loyal to the rules, regulations, and spirit of the University; and I promise to cooperate with the administration in building and sustaining the spirit and Christian morale of the University. I also promise to do all in my power to encourage and assist new students in order that they may fit into our University life in a satisfactory and happy way. If I find it impossible to return, I promise to notify the University immediately so that my reservation may be canceled.

I attach herewith my $50 matriculation fee. I understand that this fee will be refunded only if my application is refused by the University. I further understand that since the faculty is employed by the year and since students' reservations are held with the expectation that the students will claim such reservations and remain for at least one full semester, if I do not cancel my reservation at least 48 hours before the formal opening of the semester for which I am making application I will owe and will pay promptly the tuition and fees for the full semester and one month's room and board. If I leave before the end of a semester for any reason whatever (either voluntary withdrawal or expulsion), I will owe the tuition and fees for the semester and the room and board through the current school month.

Date ..... Signed .....

IMPORTANT

It is understood that attendance at Bob Jones University is a privilege and not a right, which privilege may be forfeited by any student who does not conform to the standards and regulations of the institution, and that the University may request the withdrawal of any student at any time, who, in the opinion of the University, does not fit into the spirit of the institution, regardless of whether or not he conforms to the specific rules and regulations of the University.

PLEASE CHECK APPLICATION CAREFULLY. ALL QUESTIONS MUST BE ANSWERED AND MATRICULATION FEE MUST BE SUBMITTED BEFORE APPLICATION CAN BE CONSIDERED OR PROCESSED.

INSTITUTE OF CHRISTIAN SERVICE

BOB JONES *University* Greenville, South Carolina 29614

APPLICATION FOR ADMISSION

Do Not Write in This Space

Date ..... By .....

.....

Attn. of .....

Attd. to .....

.....

Checked .....

Full Legal Name .....
Last

.....
First Middle (Nickname, if any)

Check semester for which you are making application.

- ☐ Fall 19....
- ☐ Spring 19....
- ☐ Regular Session Summer 19....
- ☐ Post Session Summer 19....

Are you applying for a dormitory reservation? .....

Social Security Number ..... Telephone .....
Area Code Number

Race ..... Sex ..... Citizenship (country) .....

Place of Birth ..... Date of Birth .....
City State

Present mailing address .....
Number, Street City State Zip Code

Permanent home address .....
Number, Street City State Zip Code

Father's name .....
(indicate deceased if not living)

Permanent Address .....

Mother's name .....
(indicate deceased if not living)

Permanent Address .....

Have you ever been a student in Bob Jones University, Academy, or Institute of Christian Service? Yes ☐ No ☐

If so, when? .....

Check your present marital status: Single ☐ Married ☐

Widow or Widower ☐ Divorced and remarried ☐

If your status is single, have you ever been married? Yes ☐ No ☐ *If answer to this question is affirmative, letter of explanation must accompany the application.*

Do you plan to b- married before time of enrollment? Yes ☐ No ☐ If you are married (or will be before enrollment), give wife's or husband's name .....

Has she or he ever been enrolled in Bob Jones University, Academy, or Institute? Yes ☐ No ☐

If you are a married woman, give full maiden name. ....

Give names of members of your immediate family who have attended Bob Jones University, Academy, or Institute.

....
Name Relationship

....
Name Relationship

Are you a church member? .....

If so, what denomination? .....

Do you attend church regularly? .....

If so, where? .....

Name of pastor .....

Address .....

Please list below as references three persons who are well acquainted with you, not including your pastor, relatives, or former teachers:

Name .....

Complete Address .....

Name .....

Complete Address .....

Name .....

Complete Address .....

Are you now or have you ever been under the supervision of a parole officer or under the custody of a juvenile or other court? .... Have you ever had a police record? ....

If so, give dates. .....

If answer to either of the above questions is affirmative, give full information, including the name and address of the judge or probation officer, on a separate sheet of paper.

Have you ever served in the United States Armed Forces? ..... If so, give the dates: from ..... to ..... If you have been separated from such service, state the nature of such separation, and, if other than honorable, specify the type thereof and the circumstances of your release. .....

.....

.....

If you have not yet been separated, state your expected date of release. .....

EDUCATIONAL

High School Record

Graduation for high school is not a requirement for admission to the Institute of Christian Service, but the applicant's school records will be secured by Bob Jones University directly from the principal of the last school the applicant attended.

Is your high school work still in progress? .... When will you be graduated? .....

Are you a high school graduate? .... If so, give exact date diploma conferred. .....

What grade have you completed? .... When were you last enrolled? .....

Name and address of high school you are now attending or of last high school in which you were enrolled.

.....

.....

Street City State Zip

List any other high schools you have attended and give the addresses.

.....

.....

American College Test

Have you taken the ACT? ..... If so, have the results been sent *directly* to Bob Jones University? .... *It is each applicant's responsibility to take the ACT and to request that his scores be sent to Bob Jones University directly from the American College Testing Program. This must be done prior to the student's actual enrollment unless special permission has been granted from the Director of Admissions to meet this requirement after enrollment.*

College Level

List all colleges, Bible institutes, professional, and technical schools you have ever attended whether or not you received any credit. Please be sure to use full, official name of school and give complete address.

(1) .....
Name of School Dates of Attendance Approx. No. Credits (Degree Received)

.....
Complete Address

(2) .....
Name of School Dates of Attendance Approx. No. Credits (Degree Received)

.....
Complete Address

Transcripts of the record of any applicant transferring to the Institute of Christian Service from another institution of higher learning will be required. Applicant must request the institution from which he is transferring to mail a copy of his transcript directly to Bob Jones University. Transcripts are accepted only when sent directly from the institution formerly attended. No reservation is final until all such transcripts are received.

Were you ever expelled, dropped, or suspended by any school or college? Yes ☐ No ☐ *If answer is affirmative, state details, including name of school, time and reason for such action, on separate sheet of paper.*

Have you made application for admission to any other institution or institutions for the same period covered by this application to the Institute of Christian Service? Yes ☐ No ☐

If so, list below all institutions to which you have applied and indicate after the name of each institution whether your application was (1) Accepted (2) Rejected (3) Pending.

.....

.....

.....

Are you *now holding* a reservation in any of the above institutions? Yes ☐ No ☐ If so, which ones?

.....

.....

.....

Note: In the opinion of Bob Jones University, it is not honorable to hold a reservation in any institution unless you definitely expect to attend. You cannot attend more than one institution.

Should you meet all our entrance requirements, we would not under any circumstances hold a reservation for you unless you sign the following statement:

I declare and affirm on my honor that I am not holding any reservations for admission to any educational institutions except such as may be listed above. I am making application to the Institute of Christian Service because it is of all institutions the one I wish most to attend. If accepted, I pledge that I will within 48 hours cancel all reservations elsewhere. I promise and affirm that I will *not make application* for admission to any other institution without first canceling my reservation at the Institute of Christian Service.

. . . . . .

Signature

Educational Objective

The applicant is asked to give a complete statement in regard to his educational objective, his purpose in entering the Institute of Christian Service program, and his plans for occupational activity after the completion of the course. A detailed statement is asked for here, since it will provide a basis for advising the applicant concerning his course of study. If additional space is necessary, please continue on a separate sheet of paper.

Health

A medical certificate must be in our files before a student is finally and definitely accepted; however, the medical examination must be made not more than six months prior to the opening of the semester for which application is made. This medical report must come from a medical doctor and should be written on the Bob Jones University Physical Report form which will be provided to each applicant within the six-month period before the semester for which he applies. Applicants should be careful not

to submit their health reports earlier than the period designated. Reservations made before health reports are valid will be held until such time as the health reports are due and valid.

Have you any serious handicap? .... Please explain. .....

Have you ever been treated for any nervous, mental, or emotional disorder? .. If so, over how long a period? .. .. and when? ..... Give name and address of attending physician or psychiatrist. .....

Have you ever used narcotics or dangerous drugs? ..... If so, state on separate sheet of paper the drugs used, the frequency, the duration, and the last date which you used them.

FINANCIAL RESPONSIBILITY

I hereby make application for admission to the Institute of Christian Service and enclose $10 application fee with the understanding that the fee will be retained to cover the cost of processing my application. I understand that my application will be processed, and I will be notified when my records are ready to be submitted to the Admissions Committee. Three weeks from the time I receive such notification I will pay the $50 matriculation fee, which is refundable only if later information forces the Institute to refuse my application.

Since the Institute will be holding a place for me if I am accepted, and possibly will turn away other applicants, I hereby acknowledge that unless I cancel my reservation at least 48 hours before the formal opening of the semester for which application is made, I will owe and will pay promptly the entire semester's tuition and one month's

room and board. If I leave before the end of the semester for any reason whatever (either voluntary withdrawal or expulsion), I will owe the tuition and fees for the semester and the room and board through the current school month. If I do not cancel my reservation for the second semester by 48 hours prior to the opening of the second semester, I will owe the tuition and fees plus one month's room and board. This agreement carries over from year to year.

I hereby declare on my word of honor that I have not omitted the name of any school in which I was ever registered, even for a brief period, and that I have answered all of the above questions truthfully and fully. Further, I give to the University my approval to gather my transcripts and other data from all schools which I have attended, together with other records and references that it believes to be necessary for the processing of my application.

....

Date Signature of Applicant

The parent or guardian of the student making application must sign in the space provided below unless the applicant is over twenty-one years of age or is entering the institution under veteran benefits.

As parent (or guardian) of the above applicant, I agree to cooperate with Bob Jones University in the enforcement of the rules and regulations of the institution and to meet the terms of the agreement about expenses, business details, etc., as outlined by Bob Jones University.

.....

Signature of Parent or Legal Guardian

If signature is that of legal guardian, the following information is necessary:

Name of Guardian ..... Address .....

IMPORTANT

It is understood that attendance at the Institute of Christian Service is a privilege and not a right, which privilege may be forfeited by any student who does not conform to the standards and regulations of the institution, and that the Institute may request the withdrawal of any student at any time, who, in the opinion of the University, does not fit into the spirit of the institution, regardless of whether or not he conforms to the specific rules and regulations of the Institute.

PLEASE CHECK APPLICATION CAREFULLY.
ALL QUESTIONS MUST BE ANSWERED AND APPLICATION FEE MUST BE SUBMITTED BEFORE APPLICATION CAN BE CONSIDERED OR PROCESSED.

PLAINTIFF'S EXHIBIT 4

ANNUAL MEETING OF THE BOARD OF TRUSTEES

May 27, 1975

The annual meeting of the Board of Trustees was held in the Pauline Rupp Memorial Room in the Founder's Memorial Amphitorium at 10 a.m. May 27, 1975. Dr. Bob Jones, Chairman of the Board, called the meeting to order; and Dr. William Ward Ayer led in prayer. Mr. Garrett called the roll of both the Regular Board and the Cooperating Board; and the following were present:

Dr. Bob Jones, Dr. Bob Jones, III, Mr. Bob Garrett, Dr. Charles Bishop, Dr. Otis Holmes, Dr. Monroe Parker, Dr. Harold Kilpatrick, Dr. William Ward Ayer, Mrs. W. J. Barge, Dr. James W. Crumpton, Mr. Robert Erhard, Dr. Marion Fast, The Honorable George Grant, Mrs. Bob Jones, Mrs. R. R. Jones, Rev. Walter Kirk, Mr. Harry Kissinger, Dr. Laurence Lautenbach, Rev. Reynold Lemp, Dr. Tom Malone, Mr. Harry Newcomer, Dr. Earl P. Paulk, Mr. Paul Ramsey, Mr. V. D. Rupp, Dr. Glen Schunk, Mrs. J. W. Stewart, Mrs. Lawrence Stewart, Mr. John Stophel, Mr. John Strong, Dr. Joe Temple, Dr. Wayne Van Gelderen, Mr. J. Ed Whitley, Mrs. Clyde Yeilding, Mr. Charles W. Bell, Mrs. Dwight Coffman, Mr. David D. Davis, Mr. Stu Epperson, Mr. Henry Ewald, Dr. Robert Gray, Mr. Gene Hall, Mr. Ken Hess, Mrs. Bob Jones, III, Mr. Jon Jones, Mrs. Joe Keyes, Mr. Russ Lash, Dr. Clifford Lewis, Dr. John McLario, Mrs. Ed Nelson, Dr. Roland Rasmussen, Mr. Walter Rumminger, Mr. Earle Sargent, Rev. Raymond Seay, Dr. Phil Shuler, Dr. Ed Ulrich, Rev. Don Wilson, Mrs. H. D. Winship, and Mr. Bob Wood.

The following names were read as members of the Voting Board: Dr. Bob Jones, Dr. Bob Jones, III, Mr. Bob Garrett,

Dr. Charles Bishop, Dr. Otis Holmes, Dr. Monroe Parker, Dr. Harold Kilpatrick, Dr. William Ward Ayer, Mrs. W. J. Barge, Dr. William Bedford, Mrs. Albert Brown, Dr. James Crumpton, Dr. Clarence Didden, Mr. Robert Erhard, Dr. Marion Fast, The Honorable George Grant, Mrs. Bob Jones, Mrs. R. R. Jones, Mr. Daryl Jones, Rev. Walter Kirk, Mr. Harry Kissinger, Dr. Laurence Lautenbach, Rev. Reynold Lemp, Mrs. R. L. McKenzie, Dr. Lester Maddox, Dr. Tom Malone, Dr. Jim Mercer, Mr. Harry Newcomer, Dr. Earl P. Paulk, Dr. Ford Porter, Mr. Paul Ramsey, Mr. V. D. Rupp, Dr. Glen Schunk, Mrs. J. W. Stewart, Mrs. Lawrence Stewart, Mr. John Stophel, Mr. John Strong, Dr. Joe Temple, The Honorable Strom Thurmond, Dr. Wayne Van Gelderen, Mr. J. Ed Whitley, and Mrs. Clyde Yeilding.

The following names were read as members of the Co-operating Board: Mr. Arnold Fletcher Anderson, Dr. Russell Anderson, Mr. Ed Anthony, The Honorable O. K. Armstrong, Mrs. William D. Bailey, Mr. Charles W. Bell, Mr. C. S. Bowen, Rev. Mark Buch, The Honorable Frank Carlson, Dr. Hugh A. Clarke, Dr. Martin Clough, Mrs. Dwight Coffman, Dr. D. W. Crankshaw, Mr. David D. Davis, Mr. Wm. Jennings Bryan Dorn, Dr. Burgin E. Dossett, Dr. Alex Dunlap, Mr. Stu Epperson, Mr. Henry Ewald (introduced as new member), Dr. Robert Gray, Dr. Eric T. Gurr, Mr. Gene Hall, Mr. Clarence Halvorson, Mr. Fred Hansen, Mr. Jesse Helms, Dr. Harold Henniger, Mr. Ken Hess, Dr. Jack Hyles, Mrs. Bob Jones, III, Mr. Jon Jones, Mr. William Jost, Mrs. Joe Keyes, Dr. B. R. Lakin, Mr. Rus Lash, Mr. Shafford Lasley, Mr. W. W. Lee, Dr. Clifford Lewis, Dr. Harry M. Lintz, Dr. Charles M. Lockwood, Mr. Charles K. Loving, Dr. Robert McCulley, Dr. John McLario, Dr. Bob, III, in his remarks, thanked everyone for coming and for their prayers for the University. He said we have the finest freshman class we have

ever enrolled, which seems surprising in light of the climate of the country. People would expect that the freshmen would get worse and worse each year, but that is not the case. The school's position eliminates the weaker ones. Most come here because they want to be here and are eager to learn. The enthusiasm and heart acquiescence on the part of the freshmen has been wonderful. There has been a real spirit of revival this year.

He described the newest academic effort we have launched—the DART program. DART stands for Degree Achieved Reduced Time. Under this program high school juniors with a sufficient grade level may come for summer school and take as many as 12 hours of work, which credit will be held in escrow for them until after they are enrolled in Bob Jones University. At the end of their senior year in high school they may take another 12 hours of work, thus enabling them to actually enter college with 24 hours of credit, almost enough to be a sophomore. The value of this program is that it allows the student to finish college in three years; and with the increased costs of a college education, this will be welcomed by many. It is cheaper to attend during the summer than during the school year. Our summer school, which has always been a small affair (never more than 400 students) should probably double with this new opportunity.

In presenting the fund drive for the new dormitories, Dr. Bob, III, mentioned that we start the school year off each year with five students to a room, when ideally there should be only three to a room; therefore, we need these new facilities even if we never do expand. If we become taxable, the depreciation on the new buildings will be of benefit to us. If we have an increased enrollment, of course, the dorms are an absolute necessity. Right now we matriculate about 5,200 students each year, and he said he is not sure we want to grow any larger; but the

Lord may have that in store for us. The new girls' dorm will face the tennis courts at an angle to the other dorms, and the boys' dorm will be beside the Auditorium behind Reveal dormitory. The plans allow for eight stories, though the first phase of the building will be four stories—three for dorm rooms and the bottom floor for laundry facilities, etc. At the time these new buildings are constructed we also hope to be able to air condition all the existing dormitories.

He explained the circumstances surrounding the purchase of the land beside the library which has long been referred to as the "Wilson property." This is the spot where some years back it was proposed to build a shopping center and we had the big zoning dispute. Now the Lord has seen fit to let us have that property at a good price. It will appreciate in value, and probably sometime in the future we will want to put our high school, junior high school, and elementary school complex there. The front tier of the property was not purchased because of the high cost, but the back four tiers came to us at a total cost of $350,000. We are going to have to do something in the near future about the situation at the high school, since they are fast outgrowing the space they have. The enrollment of the junior high has mushroomed since it was separated from the high school and the tuition was lowered somewhat, and we are going to have to add 12 classrooms on the elementary level. We also need to construct some kind of metal building to provide gymnasium facilities and classroom space for the junior high students.

• • •

[197] At this point Dr. Bob, III, recognized John Stophel, who moved that the following resolution be adopted:

> Recognizing the duty of every Christian citizen and every Christian Institution to obey the laws of

the land; and recognizing the fact that the laws and interpretations of the laws are undergoing great changes from year to year; and recognizing that it is impractical to call the Board together for all decisions that must be made with regard to changes in policies of the University made necessary by changes in the laws and court interpretations of such laws,

BE IT RESOLVED, that the Board of Trustees of Bob Jones University hereby authorizes the officers of the University to make such changes in policies as are necessary to conform to the requirements [193] of the laws from time to time, without yielding to arbitrary and capricious rulings and regulations of government agencies, but abiding by decisions of the courts, guided by the University counsel, so long as such changes are not contrary to the commands of Scripture upon which the University's position is founded; and the officers of the University are authorized to use their judgment and discretion in connection with these matters so as to keep Bob Jones University faithful to the fundamental principles of the Faith as found in the Word of God and the methods of operation that have contributed positively to the education and training at Bob Jones University of thousands of Christian leaders serving God effectively around the wrold.

• • •

PLAINTIFF'S EXHIBIT 5

[1]

SOME REGULATIONS OF INTEREST AND IMPORTANCE
1976-77

I. Dating Regulations

A. Dating Parlor

Our young ladies may date in accordance with the following regulations:

Seniors: Number unlimited. Dates must be in the Parlor during the following times: 1:00-5:45 p.m. and 7:00-10:30 p.m. on Monday through Saturday and 1:30-7:00 p.m. on Sunday.

Juniors: Four 2-hour dates per week.

Sophomores: Three 2-hour dates per week.

Freshmen: Two 2-hour dates per week.

* Couples are given 2½ hours for a dinner date, but it will be recorded as a regular 2-hour date. Senior women and women students who have special privileges may date for dinner any night of the week with permission.

Juniors, sophomores, and freshmen in the University may date from 1:00-5:45 p.m. Monday through Saturday, from 7:00-10:20 p.m. on Friday and Saturday evenings, and during dating time on Sunday—in the Parlor; 1:30-7:00 p.m.

Institute Women: Date as freshmen and sophomores the first two years and as a junior the third year unless 21 years of age. A third year Institute woman 21 years of age may date under the same regulations as a University senior.

Women students who date graduate assistants or full-time faculty or staff, may date off campus according to the girl's classification if her parent is with them. They may have dinner dates (2½ hours) according to the girl's classification, and they may be chaperoned by a graduate assistant couple or faculty couple. They must sign in and out of the Parlor for tennis dates, as this counts as a date.

Academy: One 2-hour date per week. NOTE: Academy seniors may have one 3-hour date per week.

Academy students may have Parlor dates between 7:00-10:30 p.m. on Friday and Saturday nights and from 1:00-5:45 p.m. Monday-Saturday. (Academy students may not date in the Parlor on Sundays unless permission has been secured from the Dean of Women's Office to see an off-campus visitor.) NOTICE: UNIVERSITY MEN MAY NOT DATE ACADEMY GIRLS UNLESS THEY ARE AT LEAST 16 YEARS OF AGE AND IN THE JUNIOR OR SENIOR CLASS. Also, a University woman may never date high school boys more than 2 years younger than she.

[2]

All of the information of page 1 is predicated upon the young lady's classication.

When dating in the Parlor, couples must meet and say "good-bye" *in the Parlor* and not downstairs. Couples are to sit in the Parlor where the hostess request them to sit.

Girls dating on Friday, Saturday, and Sunday must fill in a form with the name of the boy she is dating and the time checking in. It is secured from the desk in the Parlor.

Couples are to leave at the end of the dating period without being told by the hostess to leave. Couples check out of the Parlor with the hostess at the desk. If they are still dating at 7 p.m., they need not check out individually. The hostess will check the card of everyone who is dating at 7 p.m. All couples must be out of the Parlor at 7 p.m. on Sundays. Those who have *out of town men guests* must receive special permission from the Dean of Women's Office to date between 7-9:30 p.m.

Couples may make telephone calls together only when signed up for a date in the Parlor. The telephones in the entrance of the Parlor (downstairs) may be used for such calls. Before a call is made, permission must be secured from the hostess on duty. Calls cannot be made after 7 p.m. on Sundays.

Sisters and brothers may go to the Parlor whenever they wish. They are not, however, to linger in front of dormitories after meals.

Students are not to be in the Parlor unless dating or with parents and other visitors, provided they have the proper permission, or with brothers and sisters.

For the Social Parlor *the week begins on Monday and ends on Sunday.* (1:00-5:45 p.m. for undergraduates and 7:00-10:30 for senior women students and women having guests and having special permission from the Dean of Women's Office.) The dating parlor is open to students of all classifications on Friday and Saturday nights.

Students will not be permitted to take books or typewriters to the Parlor when dating or any other time.
There are to be no mixed group meetings in the Parlor, even if couples are signed up for dates.

When a student loses his social privileges *for any reason*, there will be no exceptions made, such as: dating on outings, artist series, and off campus with parents.

[3]

B. Snack Shop

Only Academy students who date on Friday or Saturday nights and University seniors who date on Saturday night may secure written permission from the hostess on duty in the Parlor to go to the Snack Shop during this dating time. This permission will be handed with the money to the cashier upon entering the Snack Shop.

Couples may go to the Snack Shop on Sunday nights from 6-6:45 p.m. if signed up for a date in the Parlor, at which time a slip is to be presented to the host or hostess on duty in the Snack Shop from the hostess on duty in the Parlor. Couples may go to the Snack Shop between Vespers and 6 p.m. without permission provided the time spent after being served does not exceed 30 minutes.

When leaving the Parlor to go to the Snack Shop, the fellow should go downstairs while his date is signing out. This will give him an opportunity to purchase their tickets and, thus, await her arrival.

Couples may go to the Snack Shop once a day for 30 minutes. The food order must be placed promptly upon arriving in the Snack Shop or Deauville Room. This applies to all students at any time of the day, whether dating, in groups, or alone. This does not mean that a young man may go to the Snack Shop once in the morning with one girl for 30 minutes and then go with another girl for 30 minutes in the afternoon. Neither does it mean that a girl may go for 30 minutes with different young men.

C. Date Line

No man student may walk a girl to her dormitory at any time except immediately after lunch and after dinner at night. Then they must walk directly from the Dining Common to the dormitory, or couples may walk directly to the front of the Student Center where they must separate immediately. This cannot be a date line but students walking together en masse.

On Sunday the young men may walk the girls to their dormitories after the morning service, Vespers, the young people's group, and from the Snack Shop *by 6 p.m.*

Couples may walk to the girls' dormitories after an outing.

Couples are not to meet before the evening meal until the 15-minute bell has rung. All couples must leave the Dining Common immediately after the meal and go directly to the dormitories. The young man is to say good-bye at the door of the girl's dormitory immediately. *He is not to wait outside* the dormitory.

[4]

Couples (single students), regardless of classification, are not to be together on the campus or in the Snack Shop after 6 p.m. during weekdays except to go directly to dormitories after the evening meals.

• • •

No young man may walk a girl on the campus unless both of them have legitimate reason for going in the same direction. If the young man is going to his dormitory, and the girl is going to class, he may walk her to the Alumni Building but must leave right away rather than linger in front of the building. This is after meals. If the girl is going from the classroom to the Library and both she and the boy are going to the Library, they may walk together.

Couples must not invent a reason to be going the same way; but must be going in the same direction for a definite purpose.

Couples are never to be together on sidewalks leading to the men's dormitories, Academy buildings, and the Hospital unless both have *classes* at the *same time* on that side of the campus. Otherwise, this will be considered loafing.

D. Off-Campus Dates

Women underclassmen are not permitted to date off campus except for dinner dates on Friday, Saturday, and Sunday nights when accompanied by an official hostess—two couples may go with one hostess. *On Sunday nights the time limit for dinner in town is 7:45 p.m. in homes, 9:30 p.m.*

Senior women and women with special privileges are permitted to leave the campus for dinner dates any night during the week, provided it does not conflict with an official program or service and provided proper permission is secured from the Dean of Women's Office.

A girl may date off campus in the company of her parents according to her classification, provided that *she remains with her parents while off campus.* In order to date off campus, the young men and young lady both must secure written permission at the proper time in the Dean of Men's and Dean of Women's Offices. Of course, the *young lady must secure her permission first,* then the young man will take her permission to the Dean of Men's Office to secure his permission. *Academy students are not permitted to date off campus, even with her parents.*

Mixed groups may go to dinner and church with their pastor whether or not his wife is along, provided he is in good standing with the school, his name is on the girl's permission form, and more than one girl is present.

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B. General

Social privileges do not begin in the morning until after the first hour class. Couples are to say *good-bye when entering all buildings* with the exception of the Snack Shop and Dining Common for noon meal. FAILURE TO COMPLY WITH THESE REGULATIONS WILL RESULT IN THE LOSS OF SOCIAL PRIVILEGES.

Since all programs in the Auditorium and Amphitorium begin at 8 p.m., the young men may call for their dates at 7 p.m. unless announced otherwise.

Couples must go into the Dining Common as soon as the organ begins playing before meals.

Dormitory men and women are never to be in the Museum or Art Gallery together. Young women may, however, visit the Art Gallery with off-campus young men visitors if they will stop by the Dean of Women's Office for permission. The same applies to young men who visit the Art Gallery with off-campus girls.

Couples who plan to be married during the summer and return to Greenville to live may secure a lady faculty or staff member to go with them one time to look for apartments from 4:00-5:45 p.m. Monday through Friday beginning April 1 through May 15. Couples who plan to marry during Christmas holidays may secure same permission beginning November 15 through December 13 with exception of Thanksgiving weekend.

Young men are never to enter the lobbies of any of the girl's dormitories, including Georgia Creel. The only exception is when they call for their dates for the artist series.

For University functions only the men may call for their dates at the women's dormitories. This does not include

Vespers, Chapel, or church. Couples may meet in front of the Amphitorium for Vespers and church, but not for Chapel.

Social Regulations During All of Our Sport Activities in the Stadium and Gymnasiums

All social regulations are strictly in effect. Students are to set up and are to be good spectators.

Couples are to always meet and separate at the sport activity except for the Turkey Bowl.

Because no couples are to sit on the top three rows at the Stadium or the bleachers at the gymnasium at any time, may we ask that the girls leave the top three rows for the young men.

Couples may meet at 1 p.m. and 6:30 p.m. They are to meet and separate at the activity place.

For the soccer season, couples meet and separate at the *walkway across from the practice studios closest to the gymnasium.*

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When students attend recitals or programs in the Auditorium, they must remain for the entire program. *Students are never to leave at intermission or any other time unless accompanied by the school nurse.*

Couples may plan tennis one afternoon a week. The afternoon will be listed on the bulletin board. Couples must meet in the Parlor, sign up for a date, secure written permission from the hostess on duty with names and time they go and the time they should return to the Parlor. Couples must check back in at the Parlor when the date time ends. (Check section VI, "Dress Regulations," for the appropriate attire while on a tennis date.)

A tennis date counts as a regular date according to the girl's classification. The hostess in the Parlor will give you the number of the court you may use for your tennis date.

• • •

Men and women who are cousins are under the same regulations as those who are not cousins unless an exception is made for a definite time by the Dean of Women or her assistant.

II. CHAPERONS FOR MIXED GROUPS.

Before a meeting for a mixed group (men and women) is called, permission to have it must be approved through the Dean of Women's Office. Secure a faculty member to be present. Mixed meetings can be called only from 7 a.m. to 7 p.m., except that regular officially scheduled groups, such as ACT, Student Teachers, and Student Body officers may have rehearsals at night in the Fine Arts Building with the *proper chaperon* and *permission.*

Faculty or staff women are official chaperons for couples, hawever, men faculty act as one when their wives are present. Single men do not act as chaperons for couples off campus except on occasions when an official chaperon is present (such as an outing). Since faculty men have mixed classes, it is permissible for a faculty man to chaperon a mixed group on campus when permission is secured through the proper channels.

III. HOSPITAL INFORMATION

Doctor's hours: Check with the Hospital.

Nurses' treatment hours: 7:30 a.m.-9 p.m. daily.

These are the only hours for treatment except in case of extreme emergency.

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Patients being admitted to the hospital must bring the following:

1. Robe
2. Slippers
3. Pajamas
4. Toothbrush and paste
5. Comb and brush
6. Bible

Only roommates, prayer captains, and chaplains may visit patients in the hospital. Visiting hours are according to the doctor's discretion.

IV. Dormitory Information

A. Quiet Hour—7 to 10 p.m. Sunday through Friday

** Anyone who enters a room with a sign on the door "Do Not Disturb" during quiet hour will be given 10 demerits. (No one can be in the room except roommates.)

Students must rise promptly at the ringing of the rising bell and lights must be out and students in bed and quiet at ringing of the retiring bell. It is important that our students have adequate rest; therefore, students must *not* be up before 5:30 a.m. Showers may be taken at 6:30 a.m.

No running in the halls of the dormitories or screaming in the dormitories at any time.

B. Prayer Meeting

Since we have only 15 minutes for room prayer meeting, all singing should be omitted so that the time may be given to testimonies, Scripture, and prayer.

Please remember that prayer meeting begins promptly at 10:30 p.m. Everyone should be seated and ready to begin at that time.

C. General Dormitory Information

The following people may stay in the dormitories during the year as overnight guests: former students, bona fide prospective students who are at least in the ninth grade. Of course, there will be a charge which will include linens and meals. Please make arrangements with the Dean of Women's Office *well in advance.*

Because of crowded conditions, we can accommodate only prospective students. In the future, we will not take anyone in the dormitory who is not at least in the *ninth grade* and definitely a prospective student, and by prospective student we mean someone who is considering us and someone who would normally be eligible for enrollment. Only high school students who are juniors and seniors, and former students who bring prospective students may stay in the dormitories during Thanksgiving, Bible Conference, "Let's Get Acquainted Days." Former students in good standing may stay at other times.

We will be glad to make the reservation, provided their appearance and dress meet our university standards. We will not keep in the dormitory long-haired, bearded men, or women in hippie clothes, mini-skirts, or pants.

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Students are not to go into another room in the dormitory unless one of the occupants of the room is present.

All rooms on the first floor must have cafe curtains.

Women students are not permitted to communicate with young men through windows.

All dormitory and campus day students are expected to attend Sunday School, the Sunday morning church service, and Vespers on the campus.

No telephone calls are to be made after 10:30 p.m. or before 6:55 a.m. on weekdays and 8:45 a.m. on Sundays and holidays except in cases of emergency. The extension phones on the first floor of the dormitories are for emergency calls to the hospital and for the Administrators to get students to phones. They are not to be used by students returning calls unless requested by faculty or staff members. Men and women students may not call each other's dormitories. Campus day students and dormitory students *may not* call each other after 6 p.m. No personal calls to any student who is a patient in the hospital may be made from the dormitory or elsewhere, and the hospital will not accept such a call.

DORMITORY NURSES'S HOURS

7—7:20 a.m. Monday through Friday
7:45—8 a.m. Saturdays
8:45—9 a.m. Sundays
10-10:30 p.m. Sunday through Saturday
10:30—10:45 p.m. Wednesdays

Please do not disturb the nurse except in cases of an emergency. Kotex will be sold by the nurse at these times only. Please do not ask her roommates to help you.

Do not ask the monitor to call the ambulance except in emergency. Try to see the nurse during her hours.

A student who sees the doctor in our hospital as an outpatient during class time will receive 25 demerits as a deliberate cut. Students are to see the doctor at a free period. If they do not have free periods when the doctor is available, they must secure permission in advance from the Dean of Women's Office to miss a class.

In order to avoid confusion, admission to the hospital for rest does not incur room or physician's charges but may

involve some lab or medication fees. Rest admission is usually allowed for minor illnesses, such as a common cold or health problems that would not normally involve hospital admission when one is at home.

The University has furnished a hot plate to be used in the *laundry room only,* from 8 a.m. to 10:30 p.m. every day except Saturday so that you may have hard-boiled eggs, soup, popcorn, or candy. Nothing else! There will be only one to a dormitory; so—first come, first served. Don't be selfish by being slow. You are expected to clean up after you have finished.

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V. Transportation Home

A. Permission

Girls who plan to ride home in cars at any time must hand a card in to their dormitory supervisors 72 hours in advance of the time they wish to leave. Cards may be secured from the monitor on duty in the lobby of each dormitory.

If you are not notified whether the card has been passed by the Administrative Conference within 48 hours, you will know your card has been approved. You will be notified if it is not approved.

B. Other Regulations

Mixed groups must arrange time so girls will arrive at their destinations by midnight. *No all-night traveling of mixed groups, except at Christmas time* and at the *end of the year,* unless with your own parents or older brothers.

Only six people are permitted to ride in one automobile. Only eight people are permitted to ride in one station wagon. (The American compact cars and the foreign compacts may carry four.)

VI. Dress Regulations

Women students must wear dresses that cover the knee-cap. They must come no higher than mid-knee when walking. Maxi dresses are permissible as long as they are sweet and feminine, do not reflect the hippie element, and are not worn with the hippie accoutrements. They may be worn every day except for church and Vespers on Sunday.

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Women students are permitted to wear slacks for gym classes and on the tennis court with or without dates. Girls may wear culottes on outings and for tennis if they meet the length requirements. Shorts cannot be worn outside of dormitories. Any young lady wearing a dress or skirt that is too short will be sent to the Dean of Women's Office. She will either be given 25 demerits or her social privileges will be taken indefinitely. It will be up to the discretion of the person on duty in the Dean of Women's Office.

All girls going on outings must wear outfit you plan to wear to be checked on Friday nights before outings between 10:00-10:25 p.m. by dormitory supervisors. Skirts that do not cover the knees will not be approved. Town and campus day students may have theirs checked any time during Dean of Women's office hours.

Women students may wear *loose fitting* slacks and blouses *with sleeves* at play rehearsal provided the change is made to and from slacks in the Auditorium.

Women students are requested to stay out of the halls and lobbies of the dormitories *unless they are fully dressed or are wearing modest housecoats.*

Girls should not go out back of dormitories with their hair rolled up. When sitting outside around the dormitories,

girls should be fully dressed. *No slacks. No blankets on campus.*

Graduate and undergraduate women who give recitals and wear formals should seek the advice of the appointed person in the Home Economics Department *before buying a recital dress.*

Girls may go to the sun deck in Georgia Creel from dormitories without hose. After dark girls may go from one dormitory to another without hose provided they do not enter the main lobby or reception room. When participating in physical education classes when slacks are worn, women students are not required to wear hose. Women students 14 years of age and over are required to wear hose at all times on campus except under conditions stated above.

Students are not to wear loud, heavy, woven hose on the following holidays, except to the athletic field: Thanksgiving, Bible Conference, and Commencement Week.

The only time you may leave the dormitory with hair rolled up is to go to society prayer meeting, and then it should be covered with scarf.

Women students and faculty members are expected to wear hats to church on Sunday mornings. If a veil is worn, the veil is to be big enough to serve as a hat; and, if any kind of a bow is worn, it must

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be attached to a good, sturdy piece of veiling large enough to cover the entire top of the head. It cannot be invisible, *neither can it blend with the hair. A hat is preferable.* A bow or scarf is never acceptable. Hats which are nothing more than a piece of veil the same color as the hair with maybe a few little bows or something about the

size of the end of finger on them are not permissible. *Any hat that cannot be seen from the pulpit is not a hat. Dresses with extremely low necklines, in back as well as in the front, and sleeveless are not appropriate for our morning worship service of Vespers.* The backs of dresses must be seen above the back of the seat in which you are sitting. Knees are to be *completely* covered when standing and mid knee when walking. When sitting, dresses should be pulled down and tucked under at the sides.

VII. PERMISSIONS

A. Visitors

Permission to see off-campus guests, parents, and relatives included, must be secured from the Dean of Women's Office. Permission *to leave* the campus with them must be secured at written permission time.

Girls should always check at the Dean of Women's Office before seeing any visitors even though permission from the parents has been sent and the Information Desk has notified them. If the Dean of Women's Office is closed, ask the Information Desk host or hostess to contact the person on duty so that proper permission to see visitors may be secured. Of course, girls may see their parents and sisters at any time; but they must have written permission to leave the campus.

B. Off Campus

One of the monitors on first floor in each dormitory gives permission when not missing classes or meals to go to town, to church, or walking at the times posted at the desk in the lobby of each dormitory. Permissions will be given two times a day for 10 minutes. Please consult permission schedule.

Women in groups of two or more with a previously enrolled chaperon with "-" or senior privileges will be permitted to check out without written permission to go across the street throughout the day from 8 a.m. to 6 p.m. Also, a sophomore woman may take two or three according to above regulation. This includes the Lake Forest Shopping Center, Bi-Lo's, Hardees, Wade Hampton Mall, North Hills Plaza, S&S, Wendy's, and Alexanders.

Students should leave check-out slips in Nell Sunday when checking off campus. After chapel on Saturdays, two girls will be in the lobby of the Amphitorium to collect check-out slips for those leaving campus immediately. Please check in at the Nell Sunday Desk when you return.

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Underclass women may secure written permission from the Dean of Women's Office to have dinner off campus until 7 p.m. on week nights. Seniors must accompany groups who stay in town after 7 p.m. on Friday and Saturday. Four must be in the group besides the senior, or four senior or special students may compose the group. Students may miss breakfast on Sunday mornings with written permission. *No student* should ever be allowed to miss any formal meal from the Dining Common such as: Valentine's Dinner, Founder's Day, Thanksgiving.

Academy students must be accompanied by a senior chaperon when off campus after 7 p.m. on Friday, Saturday, and Sunday nights for dinner or church, unless going on church buses. *Academy girls are not permitted to date off campus at any time.*

Girls who have appointments to see doctors off campus *must keep these* appointments. Come to your dormitory supervisor *well in advance,* and she will help you find a

chaperon. However, if you have a series of appointments, you should find your own chaperon. Freshman girls who have not received a number of demerits and other University girls who have good records may be left at the doctor's office or the beauty parlor while the senior chaperon goes shopping. This decision is to be made by the Dean of Women's Office. The senior chaperon should secure this permission before leaving the campus.

C. Miscellaneous

Permission to miss classes or meals and to take cuts will be gotten from the Dean of Women's Office at written permission time. Consult the bulletin board for the office schedule.

Students under 21 years of age must have permission from home before they withdrawn from the University for any reason. All students who withdraw must dc so through the Dean of Women's Office.

VIII. General Policy

Academy girls should not go to the practice rooms or the hospital after dark unless accompanied by a University girl.

There must be two or more girls together when going to the practice rooms as well as anywhere else on the campus after dark.

Women students are not permitted to be alone on the campus after dark. Two or more must go to and from buildings together. However, they are permitted to go to Grace Haight, Georgia Creel, Nell Sunday, Estelle Siddons, and Margaret Mack, and the Fine Arts Building, and the Science Building alone after dark or to the Administration Building at the request of the Administration.

Women students are not permitted in any buildings after the evening meal unless they have official business there or unless special permission is given through the Dean of Women's Office.

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The Alumni Building is never to be used as a passageway.

Women students may study in the reception room of Georgia Creel and the lobby of Estelle Siddons until 10:30 p.m., provided they are fully dressed. Do not sit on the floor to study because parents and friends of students may be visiting.

No student is to be paged in the Library, Dining Common, or Chapel except by the chancellor, president, dean of administration, dean of women, dean of men, or director of religious activities, none of whom will ask for a student to be paged except in cases of extreme emergency. No student will ever be called out of Rodeheaver Auditorium, the Concert Center, the Chapel, or the Founders Memorial Amphitorium.

No women students are permitted on *Stadium View Drive* day or night unless accompanied by a faculty or staff member or with written permission.

No person can withdraw or leave the campus at the close of school until her automobile identification emblem is turned in. A student who withdraws must give her identification card to her supervisor, also.

It has been a policy of the University for a number of years not to permit dormitory students or faculty members to give bridal showers or any other kind of showers on or off the campus; however, in cases of faculty children being married or when the student is a family member of the one giving the shower, it is permissible to have a bridal shower in a faculty home. Faculty members may have showers in

University homes for other faculty and staff members. When students attend showers, the hostess must have the plans approved one week in advance.

Women students are not permitted to visit in the rooms of faculty and staff members or supervisors who live in the dormitories. Always see a teacher in her office. The only students permitted to visit in Campus View Apartments are: sisters, nieces, and cousins, if they are of the same sex—unless the brother or sister staff member is married or is living alone. This applies to women staff members living in apartments in men's dormitories as well.

Any student who uses or attempts to use another individual's credit card will be immediately expelled. This includes all retail credit cards, telephone credit cards, or any other credit cards.

Students in Bob Jones University will not be permitted to lend money to or borrow money from one another.

Men students are not to go to the women's dormitories for any reason, except to call for dates before an official program or to walk the young ladies to the dormitories after the noon and evening meals. Of course, a young man may bring a young lady's luggage to the front door (outside) when they return from cuts together.

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Ironing is permitted in dormitory rooms from 7 a.m. to 7 p.m. Monday through Friday, and 7 a.m. to 10 p.m. on Saturdays.

Women students are not to go into the Alumni Building except to classes and for appointments with teachers.

Graduate women *only* are permitted to be alone after dark. Graduate women do not have to be in the dormitories until 11 p.m.

Anonymous notes or letters of any kind are not in accord with our Christian standards.

Do not leave money in your room at any time.

Before a student consents to baby-sit for faculty members, she must leave her name, room number, and free hours at Mr. Butts' Office. Each card with information is checked by the Dean of Women's Office. Baby-sitters must always be in the dormitory by 10:30 p.m. except after an opera or play, at which time they are to be in by the time all other students are in. The following students may be considered for baby-sitting in *faculty* homes off campus: Sophomores who have been here two years in the Academy, and juniors and seniors and women over 21. Of course, all of these must have special approval from the Dean of Women's Office.

It is common courtesy to stand when in the presence of lady faculty members, elderly men, Administrators, etc. Your dormitory supervisor is an administrative representative and should be treated with due respect. This mean you will address her as "Miss" instead of using her first name.

No dry cleaner truck is to be on this campus unless permission is secured in advance. With permission from the Dean Women's Office in the spring of the year you may have your winter things stored for the summer. Permission must be secured in the fall before having these things delivered to the dormitory.

Women students are requested not to leave anything on the campus during the summer unless it is in storage according to the regulations given at Commencement time. Stereos, sewing machines, typewriters, ironing boards, plants, and goldfish cannot be left with summer school

students or summer staff; this is also the same for the Christmas holidays. The reason for this regulation is that many of these things have been misplaced, lost, or damaged. If students refuse to keep things for you, do not blame them. It is not fair to store your things in rooms occupied because the rooms are already crowded.

IX. Living Off Campus

All students, both men and women, are expected to be dormitory students unless one or more of the following are approved:

(1) Must be 20 or a senior and married

(2) Living with parents, grandparents, blood aunt or uncles, an older brother or sister (usually married).

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(3) 23 years of age or over

This includes the regular school year as well as both summer sessions. Seniors who lack only six hours completing graduation requirements during a summer session may live off campus during the summer session.

X. Planetarium Showings

Students may secure tickets to attend the planetarium showings; however, there is never any dating for the showings, even with off-campus visitors.

XI. Cheerleaders

The earliest cheerleaders may go to the mall in front of the Dining Common for cheering is 5:30 p.m. The pep rally should not begin until 5:45 p.m. (Friday and Saturday only)

XII. TENNIS COURTS

Daytime:

The upper four courts are reserved for women students. Men students may use the six lower courts and any not being used by women students. Women students who do not get cooperation from the men students to vacate the upper four courts when they are asked, are to go to the gym and have the gym monitor return with them to have the men students leave, and take their names.

Nighttime:

Women students have courts Tuesday, Thursday, and Saturday from 6:30 p.m. to 10:30 p.m. Men students have courts Monday, Wednesday, and Friday from 6:30 p.m. to 10:30 p.m. Saturday afternoons couples may play from 2:30 p.m. to 5:30 p.m. They must sign in and out of the Parlor for tennis dates, as this counts as a date.

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PLAINTIFF'S EXHIBIT 7

BOB JONES UNIVERSITY

STUDENT HANDBOOK

1975-76

Excerpt From the Bob Jones University Charter

"The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures; combating all atheistic, agnostic, pagan, and so-called scientific adulterations of the Gospel; unqualifiedly affirming and teaching

> the inspiration of the Bible (both the Old and the New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Saviour, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God.

this charter shall never be amended, modified, altered, or changed as to the provisions hereinbefore set forth."

STUDENT HANDBOOK

BOB JONES UNIVERSITY

Your Name .....

Local Address .....

.....

.....

IMPORTANT

It is understood that attendance at Bob Jones University is a privilege and not a right, which privilege may be forfeited by any student who does not conform to the standards and regulations of the institution, and that the University may request the withdrawal of any student at any time, who, in the opinion of the University, does not fit into the spirit of the institution, regardless of whether or not he conforms to the specific rules and regulations of the University.

MESSAGE TO THE STUDENTS

The discipline of Bob Jones University is perhaps more misunderstood by some than any other facet of the University's entire program; but there are few things you will get here any more important. Without the discipline, Bob Jones Univeristy would cease to be a Christian school. It would not be the kind of place you would want to attend; and we observe that students are most happy and secure when they know what is expected of them and realize that they are in a school where rules are made to be kept and not broken.

A well-disciplined life will be an effective and productive life; and so, that which is presented to you in this student handbook is not designed to make life unpleasant for you but is given in your best interest and with a genuine concern for the development of your character and Christian witness.

Bob Jones University graduates are much in demand because of the character building they have received in this institution through discipline. While some of our students come from backgrounds where they have been allowed to do as they please and, therefore, find themselves chafing under restraint, it is nonetheless true that the formula for building successful Christian lives offered by Bob Jones University is demonstrably good for you, right, and in your best interest. If it is your desire to be a servant of God, "throughly furnished unto all good works," I'm sure the discipline of Bob Jones University will not be resented, although you may not understand, at first, the reasons behind some of the rules. Instead of writing off these rules in your own mind as being foolish, you should have the maturity to realize that there is a reason behind each of them; and any time you would like an explanation for any

rule, you will find the Dean of Men or Dean of Women happy to sit down and go into the matter fully.

You are part of the happiest student body on any campus in America. It is no coincidence that the happiest student body is also the best disciplined student body in America.

Have a good year! May the Lord bless you.

Your friend,

/s/ BOB JONES, III
Bob Jones, III
President

No student shall be retained in Bob Jones University who enters for any reason whatsoever any of the following:

Caper House
East North Street Extension

Seven-Eleven Store
North Pleasantburg Drive

Quik Shop Groceries
Lake Forest Shopping Center

Capri's
All three locations

Allen Music Company
121 South Main Street

Red Lobster
Wade Hampton Boulevard

Northside Baptist Church
515 Tindal Road

Peoples Bible Church
State Park Road

GENERAL CONDUCT

The Founder of Bob Jones University had wide experience, over a period of many years, in working with Christian groups and organizations. It was his conviction, and his conviction is shared by the entire administration, that a "gripy," destructive, critical, and cynical attitude grives the Holy Spirit and is destructive to Christian growth and Christian fellowship. Constructive suggestions made to the administration will always be welcomed, but *"griping" in Bob Jones University will not be tolerated.*

As a Christian institution, Bob Jones University expects that its students shall not only live lives that are above reproach but, also, that they shall exemplify Christian unselfishness and kindness in their dealings with faculty and fellow students. On this basis, there is no hazing in Bob Jones University.

Bob Jones University expects students living off campus to live above reproach in the local community. Though the institution cannot check every detail in the conduct of the student who lives at home or with his parents, in matters involving morals or Christian practice, dormitory and day students alike are under the same regulations at all times. If it is known that a day student violates the University's regulations with regard to smoking, drinking, dancing, movie-going, etc., he will be given the same disciplinary penalty as a dormitory student. Any student living off campus who at any time tempts a dormitory student to violate any rule under which dormitory students live will be expelled. Day students must not bring tobacco in any form onto the campus.

Since Bob Jones University believes that Christian

young people should manifest their loyalty to Jesus Christ by consecrated living, the institution does not permit dancing, card playing, the use of tobacco, movie-going, and other such forms of indulgences in which worldly young people often engage. The use of dope or harmful drugs of any kind and in any form will not be permitted. Of course, drinking, gambling, profanity, obscenity, smoking, etc., will not be tolerated.

Bob Jones University students are required to maintain an appearance in line with the standards of the University. Therefore, hairstyles, dress, etc., are subject to the regulations set forth by the offices of the Dean of Men and the Dean of Women.

GENERAL PRACTICE

In the interest of the Christian testimony and reputation of Bob Jones University for culture, no dormitory students will be permitted to take part in any social function or program away from the University without the permission of the Extension Department and the Dean of Men's or Dean of Women's Office. In the event a reading or musical number is to be given, it must be approved by the faculty member charged with this responsibility. Any number presented on a public program on the campus, as well as radio or television appearances, must be similarly approved. Any musical group that schedules programs from the University as a Bob Jones University group, either for the summer months or during the school year, must be approved. All numbers must be checked.

No announcements of programs and activities away from the University may be made without approval of the Director of Extension.

Every university student, including day students, is expected to remain until everyone is dismissed for the Christmas holidays. Every student is expected to attend all of the sessions of Commencement and to remain through Convocation. Day students may continue their regular work schedule through Convocation if the jobs will continue through the summer.

No student will release information of any kind to any local newspaper, radio station, or television station without first checking with the University Public Relations Director. Any student who is approached for information by a news reporter should refer the reporter to the Public Relations Department. This Department is in a position to answer the reporter's questions accurately and to speak officially for the University.

Solicitation by salesmen, survey-takers, or any other persons, whether students, staff members, or outsiders, is positively prohibited on this campus.

Bob Jones University students, both dormitory and day students, are not to participate in any selling which requires house-to-house solicitation.

All students secure mail through regular assigned boxes in the University Post Office. Every day student must have a telephone or access to a public telephone where calls may be received at any time. His mailing address and the telephone number must be on file at the Information Desk and in the various offices on the forms filled out at the time of registration. Any change in telephone number or mailing address must be reported to these offices at once. Any failure to receive official notices from the University because this requirement has not been met will be the responsibility of the student.

The Alumni Building is not to be used as a passageway or shortcut because of the disturbance created by entering and exiting the building.

No day student may enter the dormitories without a permission slip, secured by women from the Information Desk and by men from the Brokenshire check-out desk.

It is the responsibility of every day student to notify the Dean of Men or Dean of Women by telephone when he has been absent for more than two days. In addition, he must have a written statement from the Dean of Men or Dean of Women concerning every absence. If unexcused absences persist, a student will be automatically expelled. If excused absences continue in excess, the student will be asked to withdraw, or his future enrollment will be denied.

No student may be paged in the Library or a class without prior permission from the Dean of Men, Dean of Women, or Dean of Administration.

Bob Jones University maintains a special fund from which students may borrow small amounts up to $3 in order to pay for small bills such as hair cuts, laundry, etc. Such loans must be repaid before examinations can be taken. Permission to receive a loan may be obtained at the office of Mr. Bruce Anderson in the Administration Building.

No student is to be in another student's room after the light bell at night without special permission from the dormitory supervisor.

All notices placed on bulletin boards must be initialed by the proper authorities.

Every student is expected to read the bulletin boards daily as well as listen carefully for announcements made during the daily chapel service.

Dormitory students are not permitted to carry charge accounts except such as have been arranged in their own home towns prior to their enrollment in Bob Jones University.

Women students are not to be in the classroom buildings except when actually in a class or in a conference in the office of a faculty member.

Women students are expected to be in the dormitories following the evening meal except with permission of the Dean of Women or when they are at a program, meeting, ball game, library, snack shop, typing rooms or practice studios.

Students are to be under all regulations of the University upon arrival on the campus at the beginning of the school year and at the close of the Christmas vacation. They are to report to the University upon their arrival in Greenville.

Any student who uses or attempts to use another individual's credit card except with permission from the Dean of Men will be expelled immediately. This includes all retail credit cards, oil company cards, telephone credit cards, and any other kind of credit card.

Sunday school is compulsory for all dormitory students.

All printed and mimeographed materials sent out to advertise student and extension groups must be approved by the Director of Public Relations in its rough and final form before being printed.

No recording or photographic equipment may be taken into any of the auditoriums, chapels, or concert halls

of the University; and no photographs or recordings may be made in these buildings.

Also, since cameras and transistor radios are not permitted in the Amphitorium or Auditorium, the University will not assume any responsibility for radios or cameras left with the ushers.

All university personnel, students, faculty, and staff should be prepared at any time to give proper identification as to their name and business when questioned by a security officer.

Proper respect is to be shown to all faculty or staff members, and a student is expected to answer any inquiry of a faculty or staff member (or anyone acting in an official capacity) courteously and fully.

No student may have in his possession any key to any university building, unless that specific key has been issued to him directly in connection with his work. There will be a $1 deposit for keys issued by the University. This must be paid when the keys are issued, and it will be refunded when the keys are turned in. No reproduction or copy may be made of any keys issued by the University. No lock-picking tools or machinery for the reproduction of keys may be in a student's possession. PENALTY FOR VIOLATION OF THE ABOVE IS EXPULSION.

Students are not allowed in the University shops, storage rooms, kitchen, serving rooms, etc., except when assigned there in connection with their work.

All students who leave the country for any type missionary work must have a conference with the Director of Religious Activities. This includes those who go as individuals or as a member of a team for the Christmas

holidays or summer vacation.

Bob Jones University campus is not a park; therefore, we do not want any students sitting on blankets anywhere on the lawns of the campus.

AUTOMOBILE INFORMATION

All automobiles must be registered with the Director of Campus Security. Every student, day and dormitory, is required to have a Campus Identification Emblem on his car whether the car is listed in his or his wife's name or if the car, although registered in his parents' or another person's name, is exclusively or generally supplied for his use. (This does not apply to a town student who *occasionally* drives his parents' car, provided he does not bring the car on campus.)

No dormitory student in any of the following categories will be permitted to have an automobile either on or off the campus: (1) Academy students (2) University freshmen and sophomores under 21 years of age (3) First- and second-year Institute of Christian Service students undel 21 years of age. An exception to this regulation will be made for University freshmen and sophomores or first- and second-year Institute of Christian Service students who have had at least two full years of active duty in the armed forces.

CONCERNING THE USE OF THE TELEPHONES

For a student's convenience, all telephone calls, local and long distance, must be placed through the pay stations located in the dormitories, Student Center, and Alumni Building. After 6 p.m., the Student Center telephones are reserved for women students only. There is to be a ten-minute limit on all calls which tie up any dormitory phone.

Men and women students may not call each other's dormitories.

Students may not place personal calls to any student patient in the hospital.

Town students and dormitory students may not call each other after 6 p.m.

Students needing special services from the telephone company in conjunction with any student organization should contact the University switchboard to arrange for these services.

MUSIC

In giving special emphasis to the fine arts, Bob Jones University desires that all students learn to appreciate good music. Students are expected to refrain from singing, playing, and, as far as possible, from "tuning in" on the radio or playing on the record player jazz, rock-and-roll, folk rock, or any other types of questionable music. The following types of music may be used on campus programs, and students may have the following types of records in the dormitories:

1. Classical.
2. Semi-classical. That is, light concert music, music from operettas and older stage productions that have passed into the concert repertoire, band music, old familiar songs such as the music of Stephen Foster, or early-American songs where the album is obviously "serious" music.
3. Serious religious music.

The following types of records may not be kept by students in the dormitories and may *not* be used on campus programs.

1. Any current popular music or music recently popular including ballads, jazz, rock-and-roll, or folk-rock tunes. This includs any popular folk-singing, or "hootenanny" groups. No matter how sedate the performance or how "acceptable" the music itself, we will not allow any music that is associated with these current popular trends.
2. So-called "religious" music that is performed in folk style, Western style, or nightclub style.

ORGANIZATIONS

Literary societies will be the only student groups allowed to have permanent musical ensembles larger than eight in number. Choruses or larger ensembles organized within the literary societies may rehearse only at the time and place provided each week, 30 minutes prior to their society prayer meeting; and no additional times or facilities will be provided.

For the University class meetings, music groups larger than eight may be temporarily organized for individual programs, but such groups may not rehearse any longer than three weeks at a time. If these are mixed groups, they must abide by the regular university policy which states that unofficial mixed groups must complete their rehearsals by 7 p.m. As in the past, they must have a chaperon and must arrange for the use of university facilities by checking well in advance with the Fine Arts Office.

Music groups organized outside of the societies for extension purposes may have as many as eight members. Of course, we do not allow mixed, unofficial music ensembles to be organized for extension work.

No visitor or outsider may speak or perform on any program unless written permission is secured from the

Director of Religious Activities.

Any speaker for any organization must be approved before he is asked to speak to that student organization. It is the responsibility of the president and vice president to have this approval in advance before any contact is made with any individual concerning his speaking.

Films may not be shown for class meetings.

No clubs or groups may be organized in Bob Jones University without a charter from the administration. No dormitory student may attend any public or private function off the campus without the permission of the Dean of Men or Dean of Women.

Any society publications or papers must be checked with the Dean of Men's Office or the Dean of Women's Office before printing, and the contents must be restricted to material related to the society and written by members of the society.

No student may hold an office in any organization on the campus unless his academic record is satisfactory.

Any student who receives as many as 75 demerits in one semester will automatically lose any office he might have had in any student organization whether elected or appointed to that office.

Students are required to attend their own class meetings according to academic classification.

No individual or student organization is permitted to borrow anything from anyone in town. Students are to secure written permission from the Dean of Men's or Dean of Women's Office and from the private organization to use the facilities of that private organization.

DISCIPLINE COMMITTEE

Students are required to be on time for all meals, classes, and assemblies of any sort. (One demerit each for the first three violations; two demerits each for the next three; three demerits each for the next three convictions, etc.)

Any student who does not answer an official call slip from a faculty or staff member will be given 10 demerits automatically for the first offense; for each offense thereafter the penalty will be doubled.

No dormitory student may leave the University premises without permission after 10:30 p.m., or enter a building after 10:30 p.m. unaccompanied by the night watchman or an authorized chaperon.

Bob Jones University expects the cooperation of its students in the development of respect for and in the enforcement of the rules and regulations of the institution. Any student enrolled in this institution for at least one year who knows or suspects that another student intends to violate any rule of the school, and does not attempt to check the violation, will be considered disloyal and will be dealt with by the Discipline Committee.

Bob Jones University will not retain any student who is directly or indirectly involved in "civil rights" or other demonstrations, riots, or acts of violence.

WITHDRAWALS

Since Bob Jones University does not accept students on a one-semester basis without special arrangements, it is understood that admission is on a nine-month basis. Within a given school year, the student's reservation is automatically carried over from one semester to the next; therefore, if a student withdraws at the change of semesters, he must state his intentions in writing to the administration no later than the day on which first

semester examinations begin. If he fails to make such notification by this date, he becomes liable for the room and board for the first month of the second semester. If he has not made written notification within 48 hours prior to the opening of the new semester, he becomes liable for the entire semester's tuition and fees plus one month's room and board. Of course, no transcripts can be issued until these payments are made.

Any time a student withdraws, his I. D. card must be turned in.

No minor student may withdraw from school until permission for him to do so has been received from his parents or guardian by the Administration. Any student who withdraws without contacting the Administration is automatically expelled.

DRESS INFORMATION

In a day of slovenly and careless dress, it is essential to our Christian testimony that Bob Jones University maintain certain standards of refinement. Women students are expected to dress neatly and modestly at all times. Men students are required to wear a shirt with a tie until after lunch and whenever they leave the campus. (This should be the kind of a shirt designed with a collar to be worn with a tie, and the shirt should be buttoned and not left open at the neck.) Coats and ties should be worn to all evening meals as well as at all times out on the campus on Sunday.

Students are expected to come to meals, classes, and assemblies clean and properly dressed (not in work clothes).

Students will not be permitted to wear each other's clothes and cannot exchange clothes without permission of

the Dean of Men or the Dean of Women, when once exchanged, clothes may not be re-exchanged.

All women students 14 years old or over are to wear those at all times.

DATING INFORMATION

Couples may date for the length of time as stated by the Dean of Women's Office. The length of time is determined by the young lady's classification (freshman, sophomore, etc.).

The Social Parlor is a place for students to entertain their visiting friends and a place for couples here on the campus to date. IT IS NOT A STUDY HALL. Therefore, books, typewriters, etc., may not be taken to the Social Parlor.

Couples are not to be together at any time in any of the public buildings except the Dining Common, the Student Center, and the Amphitorium or Auditorium for dating programs.

There is to be no interracial dating.

1. Students who are partners in an interracial marriage will be expelled.

2. Students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be expelled.

3. Students who date outside of their own race will be expelled.

4. Students who expouse, promote, or encourage others to violate the University's dating rules and regulations will be expelled.

An academy girl must be both a junior in the Academy and at least 16 years of age to date a university student.

High school boys will not be permitted to date college girls who are more than two years older than they are.

It is the business of Bob Jones University where its students go and with whom they associate. Therefore, dormitory students must have written permission to date off campus.

Men and women students, day or dormitory, regardless of classification, are not to be together on the campus or in the Snack Shop after 5:55 p.m. during weekdays except to go directly to dormitories immediately after evening meals.

No young man may walk a girl on the campus unless both of them have a legitimate reason for going in the same direction. If the young man is going to his dormitory and the girl is going to class, he may walk her to the Alumni Building but must leave right away rather than linger in front of the building. If the girl is going from the classroom to the Library and both she and the boy are going to the Library, they may go together. *Couples must not invent a reason to be going the same way;* they both must be going the same direction for a definite purpose.

Couples are never to be together on any back walk unless both have classes in the same building at the same time. Any walk which is South of the walkway which passes in front of the Fine Arts Building, the Amphitorium, the Auditorium is considered a back walk. This means that you do not walk to the Science Building unless the two of you have classes there at the same time.

Social privileges do not begin in the morning until after the first hour class. Couples are to *separate* when entering all buildings with the exception of the Student Center except on dating occasions. This includes the Amphitorium for chapel. After separating, you may not rejoin your girl friend inside the building or in the hallway or in the classroom. FAILURE TO COMPLY WITH THESE REGULATIONS WILL RESULT IN THE LOSS OF SOCIAL PRIVILEGES.

Couples must go into the Dining Commons as soon as the organ begins playing before meals.

DAY STUDENTS

For our definition, a legal guardian is one with whom a student lives for reasons other than to get around our regulation that all students must live in the dormitory unless old enough to be exempt from dormitory life. That means that if a student assumes a guardian prior to coming here or after coming here solely for the reason of being able to live in town, he will not be accepted as a student; or if he is already a student, he will be dropped from school.

One or more of the following conditions must be met before the administration will consider any person being a day student:

1. Be a married student 21 years and over.
2. Live with parents.
3. Live with blood relative.
4. Live with older brother or sister who is married.
5. Be 25 years of age or older.
6. Be a graduate student.

Wives of day students should cooperate fully with

their husbands in their preparation as students in Bob Jones University. We would not retain any student whose wife is seen out of her own home immodestly dressed or in shorts. If she wears modest slacks around her own yard when she is working doing a job where slacks are more modest than a dress might be, that is all right; but she should not habitually wear slacks instead of dresses. We would not keep in school a student whose wife went out of her own yard in slacks.

Town students MUST attend Vespers. Any town student must attend chapel every day of the week in which he has a class. Exceptions may be made with written permission only. If a town student is not on campus before noon on Saturdays, attendance will not be required for Saturday services.

All students, married or single, who take their meals in the University Dining Common are considered campus day students. All campus day students are expected to attend church service Sunday morning and Vespers Sunday afternoon on the campus.

Single men and women are not to sit in parked cars on the University campus at any time.

SPECIAL NOTICE TO ACADEMY STUDENTS

1. Society prayer meeting is REQUIRED for all academy dormitory students.

2. Academy students are required to sit on the main floor of the Amphitorium and Auditorium for ALL PROGRAMS, including church, Vespers, concerts, artist series, etc.

3. Academy dormitory students will not be given permission to date off campus.

4. Academy town students who drive automobiles on campus must have their cars parked in the Academy parking lot on back campus only or along the fence between the laundry and the back campus gatehouse. The cars are to remain parked until the students leave the campus.

5. Academy town students' absences must be reported to the Academy Office immediately, and the Academy students' parents are requested to call the Academy Office the same day of the absence. Upon return, the student must bring a written excuse from the parent as to the reason for the absence.

6. There is to be no loitering in or around the Academy buildings. Students should spend free hours in the Academy study lounge, or the Library.

CARE OF PROPERTY

Willful damage to or destruction of university property will not be tolerated. All damage must, of course, be paid for whether willful or accidental.

No signs, banners, plaques, pictures, or other objects may be hung on the walls of any buildings without explicit permission in writing from the Manager of Institutional Affairs. (However, permission to hang any object on the wall of one's own dormitory room may be given orally by the dormitory supervisor, but such permission is required.)

There must be no tampering with electric bells, official timepieces, or electric equipment.

Students are expected to cooperate in conserving electricity, water, and heat. All lights are to be turned off when students leave their rooms. Faucets must not be left running, and all leaking plumbing is to be reported immediately. When steam heat is on and the students open

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ATTENDANCE AT CLASSES AND SCHEDULED ASSEMBLIES

Every student is required to attend all classes, chapel, and Vespers, except under the following circumstances.

1. When he is ill, and the illness has been properly reported.
2. When he is excused by the proper administrators because of some emergency which may have arisen in connection with a regular job.
3. When he has left the campus with official permission to be away from the city to take part in a program or religious service.
4. When he goes home according to the regulations given below:

Except in cases of emergency, permission for a dormitory or day student to leave Greenville must be secured from the Dean of Men or the Dean of Women ONE WEEK IN ADVANCE. If classes are to be missed, this permission must be signed by instructors of the classes to be missed; and class work must be made up IN ADVANCE or permission must be secured in advance from the instructors to make up the work or from work supervisors to be absent from a regularly assigned job.

If a student is a minor, permission to go home will be granted only upon receiving a written request sent directly to the Dean of Men or Dean of Women from his parents or guardian.

To obtain a cuts permission OLD students must have at least a C average for the previous FINAL grading period and not be on academic probation. NEW university and transfer students will not be permitted to take cuts during

the first nine weeks if on academic probation. They may take cuts during the second nine weeks if they have a C average for the first nine weeks. ACADEMY students through their junior year must have at least a D average with no F's. Seniors must have at least a C average and not more than one F. INSTITUTE students must have all S grades or above.

If a dormitory or day student has an excessive number of absences due to illness and if he is having academic difficulty, he will be denied the right to take cuts or his cut time will be shortened.

Work students must bring a note from their work supervisor indicating that satisfactory arrangements have been made for the time they plan to be away.

No student may miss any class or scheduled assembly such as Vespers or chapel more times in the semester than that event meets within one week. This means that a student may not be away for more than one week for all purposes, which includes extension cuts, emergency cuts, as well as the usual visits to one's home or to the home of relatives. Should he be away from the University on any holiday, he will be considered as having missed the classes regularly scheduled for that day even though the classes do not meet.

No cuts may be taken (1) during Bible Conference (2) within three weeks before or after Christmas holidays or Commencement (3) within three weeks following the beginning of any semester or a student's entrance into the University (4) during mid-semester examinations. Under no circumstances, except critical illness or death in the immediate family, will any student be permitted more than one week of cuts. No cuts of classes are allowed in either session of summer school.

For each class absence, a student will receive a grade of zero. This may be removed in the case of legitimate absences by the student's making up the work in a way that is satisfactory to his instructors. If a student knows he is to be out of the city and, therefore, absent from his class, he must secure the instructor's permission IN ADVANCE to make up his work.

LEAVING THE CAMPUS

Dormitory students may leave the campus on the following basis, provided that they go only to the city of Greenville or within a radius of ten miles from the University campus.

MEN

High School: Twice a week (daytime only); must check out and in.

Freshmen: Three times a week (daytime only); must check out and in.

Sophomores: Number of times unlimited; must check out and in during the day; permission necessary at night.

Juniors: Number of times unlimited; must check out and in at night.

Seniors: At their pleasure, but must not violate any rule by their absence.

WOMEN

They may leave only with proper permission and in the company of their parents or an authorized chaperon. Exceptions may be made in the case of upper-class women.

ALL STUDENTS

All students regardless of classification must obtain written permission to leave the campus on Sunday.

All students are urged to attend a good fundamental church of their own denomination each Sunday night. Men students must obtain permission to attend the Sunday night church service; however, once that permission has been obtained, the student may on succeeding Sunday nights attend services in that same church by simply checking out and indicating the church he has permission to attend. If the student decides he wishes to attend another church, he must then secure a new permission.

No student may leave the University campus except under the conditions specified above without written permission from the Dean of Men's or the Dean of Women's Office.

No dormitory student may visit any local home without the permission of the administration.

Permission for a student to visit any home outside of Greenville except his own or that of a close relative will not be granted, except in certain special cases. The Dean of Administration will be the judge of whether or not a case is "special."

PEP SONG

Bob Jones University, we're pressing on to victory,
Bob Jones University, our loyalty we pledge to thee,
Blue and white with purpose true,
And to your standards high we cling.
Bob Jones University, our praise to thee shall ever ring.

BOB JONES UNIVERSITY HYMN

Wisdom of God, we would by Thee be taught:
Control our minds, direct our ev'ry thought,
Knowledge alone life's problems cannot meet;
We learn to live while sitting at Thy feet.

Light of the world, illumine us we pray,
Our souls are dark, without Thy kindling ray;
Torches unlighted, of all radiance bare,
Touch them to flame, and burn in glory there!

Incarnate Truth, help us Thy truth to learn,
Prone to embrace the falsehood we would spurn;
Groping in error's maze for verity,
Thou art the Truth we need to make us free.

Unfailing love, we are so cold in heart,
To us Thy passion for the lost impart;
Give us Thy vision of the need of men,
All learning will be used in service then.

Great King of kings, this campus all is Thine,
Make by Thy presence of this place a shrine;
Thee may we meet within the classroom walls,
Go forth to serve Thee from these hallowed halls.

DEFENDANT'S EXHIBIT 2

[Letterhead of]
LEATHERWOOD, WALKER, TODD & MANN
Attorneys at Law
Greenville, South Carolina 29602

June 2, 1975

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HAND DELIVERED

District Director
Internal Revenue Service
Atlanta, Georgia

Re: Bob Jones University
Wade Hampton Boulevard
Greenville, South Carolina 29614
Your Reference 730:TPS

Gentlemen:

By letter of H. E. Kenworthy, Chief, Employee Plans & Exempt Organizations Division, dated April 16, 1975, referenced above, the Internal Revenue Service gave notice of proposed revocation of the determination letter to Bob Jones University (the University) dated March 30, 1951. By letter dated April 29, 1975, the undersigned as counsel for the University protested the proposed revocation and submitted facts and arguments in support. Since the date of said protest letter, the University's Board of Trustees has met and taken action which counsel for the University feel is dispositive of this matter. Therefore, the University hereby amends its protest letter dated April 29, 1975 as follows:

On Tuesday, May 27, 1975, the Board of Trustees of the University authorized a change in the University's admissions policy. Pursuant to this authorization, the University has adopted the following admissions policy:

> Along with all other educational institutions, Bob Jones University is now required by law to admit students of any race to all rights, privileges, programs and activities generally accorded or made available to students at the University; and the University does not discriminate on the basis of race in the administration of its educational policies, admission policies, scholarship and loan programs, and athletic and other administered programs subject to and in conformity with the University's religious beliefs and practices as embodied in its rules and regulations, including, but not limited to: (1) Applicants and/or students who are partners in an interracial marriage will be denied admission and/or expelled. (2) Applicants and/or students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be denied admission and/or expelled. (3) Applicants and/or students who date outside their own race will be denied admission and/or expelled. (4) Applicants and/or students who espouse, promote, or encourage others to violate any of the University's rules or regulations, including those set forth above, will be denied admission and/or expelled.

The University submits that its current admissions policy set forth above is racially neutral and thus is in compliance with the requirements of Rev. Rul. 71-447, 1971-2 CB 230.

The only limitation in the current admissions policy applies to action taken by applicants or students which would be controlling no matter what the race of the particular applicant might be. If an applicant was a partner in an interracial marriage, he would be denied admission no matter what his race. Thus, if a white who is married to a black applied, the white would be denied admission in exactly the same fashion as if his spouse applied. Similarly, if a white dated a black or oriental, both would be expelled if they were students. The other restrictions in the admissions policy are similarly neutral in their application. All limitations would apply to whites as well as blacks.

Should the Internal Revenue Service disagree with the University's position that its present admissions policy is racially neutral and in compliance with Rev. Rul. 71-447, *supra*, the University reiterates that the proposed revocation of its determination letter dated March 30, 1951 is illegal and unconstitutional as set forth in the above mentioned protest letter dated April 29, 1975. The University would also contend that the proposed retroactive revocation constitutes an abuse of discretion on the part of the Commissioner pursuant to Section 7805 of the Internal Revenue Code for the reasons stated in said protest letter.

The University would further assert that in view of the obvious racial neutrality of its current admissions policy that any continued revocation proceedings would only amplify and bring into sharper focus its contention that the proposed revocation is illegal, unconstitutional and in violation of the First Amendment to the Constitution of the United States. Obviously the only objection the Service could mount to the present admissions policy would be simply that it objects to the exercise of racially neutral religious beliefs.

The University is prepared to discuss publication requirements with appropriate Internal Revenue Service personnel.

I certify under penalty of perjury that I prepared the above amended protest and to the best of my knowledge and belief the information contained herein is true.

Respectfully submitted,

O. JACK TAYLOR, JR.
O. Jack Taylor, Jr.
Counsel for the University

OJTjr:nr

cc to Mr. Meade Whitaker
Chief Counsel
Internal Revenue Service
Washington, D. C. 20224

DEFENDANT'S EXHIBIT 3

BOB JONES UNIVERSITY

BULLETIN

CATALOG ISSUE

Volume XLVIII February, 1975

Announcements

1975-76

Greenville, South Carolina

ADMISSIONS INFORMATION

General Requirements

Candidates for admission to any of the schools of the University must give evidence of good character. Students transferring from other schools must present a statement of honorable dismissal.

Applicants under twenty-five years of age must live in the University dormitories unless married or housed with close relatives. Those between twenty-five and thirty years of age may attend either as dormitory students or as day students. Applicants thirty years of age and over may attend as day students only and are not eligible for dormitory accomodations.

American College Test (ACT) scores are required of all undergraduate applicants. Each applicant is urged to apply for and stand the required examination well in advance of the semester for which he seeks admission. Any applicant who finds it impossible to take this test prior to his enrollment will be tested at the beginning of his first semester in residence. The examination is administered nationally on established schedules with a closing date for each administration. A bulletin of information and application blank with the dates of administration and fees may be obtained by writing the American College Testing Program, P. O. Box 168, Iowa City, Iowa 52240. High school students may also acquire information about this test from their principals or counselors. These test scores are useful in processing a student's application and in advising him during his college career.

Degree Achieved—Reduced Time (DART)

Bob Jones University offers an accelerated program through which students in many disciplines may complete their baccalaureate degree in three years. The program

involves attendance in two or three summers of eight weeks each in addition to three regular academic years of two semesters each. This program, consistent with the national trend toward acceleration of undergraduate study, makes possible the education of a substantially greater number of students than does the traditional four-year program. Students desiring to complete their program in three years should plan their schedule carefully with their academic advisor beginning with their work in the freshman year.

HOW TO APPLY FOR ADMISSION

Students Attending College for the First Time

1. Secure an "application for admission" from the Director of Admissions, Bob Jones University, Greenville, South Carolina 29614.
2. Fill in the application form completely.
3. Send this form with a ten-dollar application fee to the Director

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of Admissions.

4. Upon receipt of these materials, the Admissions Office will process your application, will notify you of your admission status, and will send further information.
5. Arrange to take the American College Test (ACT) by writing to Box 168, Iowa City, Iowa 55240. If already taken, request a copy of your scores to be sent to us by writing to the same address.

Students Transferring from Other Institutions

1. Follow Steps 1 to 5 under "Students Attending College for the First Time."

2. Request each college or university which you have previously attended to send a complete transcript of your work to Bob Jones University.

Time Required for Processing of Application

Ordinarily, an application can be processed in no less than three weeks, and it is not unusual for an application to require six weeks or longer for processing. It is necessary to secure the high school record, to evaluate for transfer students any transcripts of credit earned in other institutions of collegiate level, to secure the necessary character recommendations, and to coordinate all these records in the Admissions office before a final letter of acceptance can be sent. No reservation is final until all these records are in order. Consequently, an applicant should allow himself as much time as possible for the processing of his application.

A person admitted to the University in the last few weeks before the opening of a semester frequently can be given only a tentative reservation with the expectation that it will become final if the University receives a cancellation of reservation held by an earlier applicant. The application must be accompanied by the $10 application fee in order to be processed. Reservations confirmed more than six months before the opening of a semester are contingent on the applicant's providing a satisfactory health certificate within the six-month period prior to the opening of the semester in which he enrolls.

FRESHMAN ADMISSION BY HIGH SCHOOL CERTIFICATE

Freshman Standing

The University Director of Admissions will request directly from the applicant's high school principal a properly certified statement that the applicant is a high school

graduate recommended for college work. Upon receipt of this information, and provided the applicant has met all other requirements for admission, students from approved high schools will be admitted to the freshman class.

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Required Units

Applicants should have at least 16 acceptable units of secondary school work and have received a high school certificate. (A unit is defined as five 45-minute periods each week for 36 weeks.)

Ten of these units must be in such academic subjects as English (three units), mathematics (two units), natural science (one unit), social studies or history (two units), or foreign language (two units).

If a student does not present one unit of United States History, he must take that course on the college level. This includes all foreign students.

Students deficient in entrance requirements, but whom the University is willing to accept, must make up deficiencies by taking additional hours on the University level. These hours are added to the total 130 required for graduation. Since one semester of college work is usually construed to be the equivalent of a year's high school course, a student deficient one half unit of academic electives is required 132 hours for graduation; a student deficient one unit, 133 hours for graduation, etc. These additional hours must be taken in the areas of study in which the student is deficient.

LIMITED EARLY ADMISSIONS PROGRAM (LEAP) FOR HIGH SCHOOL STUDENTS OF DEMONSTRATED ABILITY

LEAP is designed for all qualified rising seniors in high school. The courses offered will be regular college

courses and those high school students admitted will attend classes with regular college students. The program is offered as a means of enriching the education of outstanding high school students and is not to be regarded as an effort to supplant the secondary school program.

The courses taken must not be the equivalent of those the student would get in his senior year of high school since these students are expected to return to high school and finish a normal senior year. Furthermore, courses may not be substituted for high school credit in order to secure early admission to college.

Each student will be admitted only upon recommendation of the high school principal. He should have superior test scores and should consistently be doing A and B work in his high school courses.

Upon the successful completion of these summer school courses, the right earned will be entered upon the university records but held in escrow until high school graduation has been achieved and the student has completed one full year of residence study in Bob Jones University at which time the credits earned will then be applied toward the student's degree objective in Bob Jones University.

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FRESHMAN ADMISSION BY EXAMINATION

Students whose educational backgrounds have been irregular, but whom the University is willing to accept, may be admitted on any of the following bases:

Equivalency Diploma

The High School Equivalency Diploma or certificate is now issued by the state departments of education of nearly all the states as part of their services in the field of

adult education. In many states this service is available on the same basis to veterans and non-veterans alike, in others on a differentiated basis, and in still others to veterans only. In all cases, however, it is awarded to persons of post high school age on the basis of achievement shown by examination rather than achievement shown by accumulation of high school credits, though in some states examination results must be supported by a partial high school record. Specific requirements vary from state to state, especially as to the minimum age at which one is eligible to take these examinations. An inquiry addressed to any state department of education will reveal current practices for that particular state. Other things being equal, an equivalency diploma is construed as sufficient basis for college admission and meets all the specific entrance requirements.

G. E. D. Tests

The USAFI General Education Development Tests also serve as a basis for admission for the veteran or other adult applicant when satisfactory scores have been achieved at an approved examination center prior to the enrollment of the student in the University. Satisfactory scores achieved on these examinations, whether or not they have resulted in the issuance of a diploma, are construed as meeting all entrance requirements. In some circumstances advanced standing is given on the basis of the College Level G. E. D. Tests.

Entrance Examinations

Bob Jones University Entrance Examinations are required of all applicants who do not qualify for admission by regular high school certificate or by one of the three kinds of examinations described in this section. This requirement holds even though an applicant may wish to

take special work only. For these special students the examination results serve as a basis for academic counseling. To be eligible for the University Entrance Examinations, however, an applicant must have an irregular educational background and must in most cases be at least twenty-one years of age. If a student seeking admission does not meet admission requirements in any of the ways previously described and does not qualify for the University Entrance Examinations, he may seek admission to the Bob Jones Academy only.

The University Entrance Examinations consist of a battery of five

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standard tests administered at the beginning of each semester. These examinations include an ability examination, an English placement test, and general achievement tests in social studies, natural sciences, and mathematics. Satisfactory scores on these examinations are construed as meeting all entrance requirements.

Other Tests

Other examination results such as those obtained from the tests of the College Entrance Examination Board or a similar approved organization are accepted as a basis for admission. Applicants who fall into this group should make this fact known in their correspondence with the Director of Admissions.

Conditions Applying to All Students Admitted by Examination

A student applying and accepted for registration on the basis of satisfactory examination results will be enrolled and placed on probation one semester. If such a

student meets the educational standards of the University during this time, this condition will be removed; and he may become a candidate for a degree. If at the end of one semester there remains a question as to the eligibility of the student to work for a degree, the condition will be continued one more semester. If at the end of two semesters the student's work is not of such quality as to justify his working for a degree, he must discontinue his enrollment. All entrance requirements must be met before any student becomes a candidate for a degree.

Conditions Applying to All New Freshmen

No student, even though he has no entrance deficiencies and is admitted unconditionally, may consider himself a candidate for a degree until he has demonstrated the ability to earn a degree by at least one full semester of satisfactory work. An equal number of semester hours and quality points, that is, a C average, is the minimum satisfactory record necessary for University graduation.

Each year the University admits a limited number of students whose high school records are below the level generally required for recommendation to college work. Such a student may be admitted conditionally and is not eligible to become a candidate for a degree until he has demonstrated his ability to do work of degree quality. The length of time that such students are retained on condition depends on their progress.

Other Admission Categories

Admission as a One-Year Business Student

Students enrolled in the one-year business course are freshmen by classification and take the course of study outlined under the School of Business Administration for the one-year business student.

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To qualify for the one-year business certificate, the student must be a high school graduate and must complete the prescribed course of study and meet the minimum grade average specified in the requirements. A one-year business student differs from other freshmen in that he is not required to remove entrance deficiencies. If such a student, however, decides after one year to continue toward a degree program, he must remove all deficiencies and will retain freshman classification until such deficiencies are removed.

Admission as a Special Student

The University accepts a limited number of special students who fall into one of the following categories: (1) Students who have completed a bachelor's degree and who wish to take additional work in some area without working for a degree, (2) Mature students, past normal college age, who qualify for regular admission and who wish to take only a few courses on a part-time basis, but are not interested in a degree.

Special students are not required to remove entrance deficiencies and may take any course for which they have met the prerequisites. It should be borne in mind, however, that the University does not permit any student to take all his courses in one or two fields but recommends even for special students a program of general education. No student has the academic classification of "Special" unless he has applied and been admitted as a special student; or unless after he has been admitted as a regular student, he has been given permission by the registrar to become a special student. The fact that a dormitory student may be classified "Special" academically does not mean that he will be granted special privileges by the Dean of Men or Dean of Women.

A special student seeks admission in the same manner as a regular student. Work taken as a special student may be applied toward a degree program later if the student qualified for admission to a degree program at the time the work was taken.

Admission as a Part-Time Student

Since 12 semester hours constitute the minimum full-time load in the University and since all dormitory students are full-time students, a part-time student by definition then is a day student carrying fewer than 12 hours. Many part-time students are wives of full-time University students who wish to take certain special courses; others are residents of the local community who wish to enroll for a partial load of work only. Many part-time students by nature of their program of study are special students, although some part-time students follow a regular program of study.

To secure a permit to register, a part-time student must follow the regular procedure in filing application for admission.

A part-time student who wishes to take only an applied music course pays the special rates for such instruction according to the information under "Expenses for Part-Time Students."

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Admission of Foreign Students

One of the unusual features of Bob Jones University is that as a private liberal arts university it attracts its student body each year from practically all the states plus the District of Columbia, the outlying possessions of the United States, and more than a score of foreign countries. In addition to those who are foreigners by citizenship, the

University attracts each year a number of students who are of American citizenship but who were born and have been reared in foreign countries.

In recent years, the student body has included annually students from 18-30 states and from 20-30 foreign countries.

Bob Jones University is proud of its foreign students and does everything within its power to facilitate the admission of its qualified foreign applicants. The foreign student, however, who desires admission to Bob Jones University, and into whose hands may come a copy of this catalog will do well to read carefully the following paragraphs.

A foreign student makes application for admission to Bob Jones University in the same manner as any other student with the additional problem of meeting certain requirements of his own country plus the requirements of the United States for approval to study in this country. Before a letter can be sent from the University to the student to assist him in securing the necessary credentials to leave his own country to enter America for study, the foreign student must:

1. submit his application with the $10 application fee plus the $50 matriculation fee for the semester for which the reservation is requested (a total of $60) which must be in United States funds or the equivalence of United States funds. In the event the application should be rejected, $50 will be refunded.
2. furnish satisfactory evidence as to his character, ability to meet his financial obligations in this country, and academic preparation for study in an American university. He must also provide proof of his proficiency in the English language.

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Because of the time involved, all foreign applicants should submit applications with all the necessary credentials at least six months to a year in advance of the semester when the individual student expects

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to enroll. Because of the considerable number of Canadian applications received each year, the initial letter from the University to every Canadian applicant will include a special syllabus giving further details concerning the admission of Canadian students.

A letter of tentative acceptance granted to a foreign student on the basis of satisfactory preliminary information is subject to final confirmation by the satisfactory completion of all records pertaining to the student, including the evaluation of academic credentials by the U. S. Office of Education, which is final and binding in all cases. It is understood that the foreign student in claiming his reservation accepts this provision as part of his contract with the University.

Admission of Service Personnel

A limited amount of credit may be allowed for training programs followed in military service provided this work is in line with baccalaureate requirements. Any veteran desiring an evaluation of such work must have his official transcript forwarded directly from the proper authorities to the Registrar of Bob Jones University. Credit is allowed on the basis of the recommendation in the manual, *A Guide to the Evaluation of Educational Experiences in the Armed Services.*

ADMISSION TO ADVANCED STANDING

General

Transfer students seek admission to the University in the same manner as entering freshmen. It will be helpful,

therefore, for every prospective transfer student to read the general requirements for admission and the requirements for freshman admission. The high school transcript of the transfer student will be secured by the Admissions Office of the University. The transfer student, himself, is responsible to see that transcripts of all previous college level work are sent directly from *each* institution attended to Bob Jones University. All such transcripts should be requested at the time the application is mailed to the University since the application cannot be processed until all records are in order. Transcripts are not accepted from students.

All transfer credits are accepted on a provisional basis, which means that they do not become a part of the student's permanent record until after he has successfully completed one semester of residence study

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and that the unit of credit is the semester hour. Quarter hours are transposed into semester hours at the ratio of 3:2—that is, 3 quarter hours equal 2 semester hours. While every effort is made within the regulations to give the transfer student full value for his previous work, no fractional credits are recorded and course credits of a fragmentary nature are disallowed.

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High School Record

A transfer student's high school record is evaluated in terms of Bob Jones University entrance requirements. Occasionally a student who was admitted to another institution without deficiency will find himself deficient in entrance requirements when transferring. Such deficiencies, if any, will be indicated on the registration materials given to the transfer student when he enrolls. If a student has taken college level courses which may be substituted

for entrance deficiencies, the credit for such courses will be sacrificed.

Transfer Credit Regulations

The regulations governing the transfer of credits earned in other institutions are as follows:

1. It is the policy of the University to consider for transfer credits earned in a regular college or university or other institution of collegiate level.
2. Only those credits which carry a grade of at least C or its equivalent may be transferred.
3. Courses acceptable for transfer must be substantially in line with the course of study offered by Bob Jones University and must serve a useful purpose in the particular curriculum which the student proposes to follow. A course to be accepted need not be identical with a course offered at Bob Jones University, but it must be a course, even as a free elective, which is generally in line with the baccalaureate requirements as defined in this catalog. For example, a student who has heretofore pursued for any length of time a curriculum in the field of engineering, agriculture, or any other field in which courses are not offered at Bob Jones University may not expect to receive full transfer value for his previous work. A limited number of such credits are transferable as free electives.
4. In transferring credits, all evaluations are made in terms of courses as they appear in the University bulletin. Though the original course titles are retained, the student's transfer record will show the course number as it appears in the Bob Jones University catalog. Transfer courses for which there exist no parallel courses in this institution but which are acceptable for transfer will be assigned the proper departmental classification.
5. Transfer credit may be given by the University in any one field of study not to exceed the amount of credit required in the University for a major in that particular field. For example, a student who has had extensive training in religion elsewhere may not expect to transfer more than 30 semester hours in religion, since 30 semester hours of appropriate courses constitute a religion major in Bob Jones University. If the student expects to major in the field in which he presents the maximum number of transfer hours, he must complete a minimum of 12 semester hours in his major field in Bob Jones University. Further, the total number of credits in any one

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should be borne in mind that the "in residence" regulation requires a candidate for a degree to complete a minimum of 30 semester hours in two semesters of residence in Bob Jones University. This stipulation means that in the minimum of two semesters the student must carry a full load of work and must meet the minimum academic standards required by the University for graduation.

8. The University does not accept in transfer any work taken elsewhere unless the student was a high school graduate at the time the work was taken.

Transfer Credit from Bible Schools

In addition to the regulations just enumerated, the following regulations clarify the basis of transfer for work completed in a standard Bible college:

1. Credits earned in the field of religion in a standard Bible school of college grade are considered for transfer purposes on the same basis as credits earned in other fields in a regular college or university.
2. Credits earned in a Bible school of approved collegiate standing are accepted on the same basis as credits earned in any other institution of college grade.
3. Credits in the academic fields earned in a Bible school which does not have a recognized college department may be transferred only by validation. This validation may be secured by examination, as in English, or by the completion of the next course in sequence with a minimum grade of C, as in Greek. The procedure used is that recommended by the department. All validation examinations must be completed within the first half-semester of a student's registration in the University. A fee of $1.00 is charged for each validation examination.
4. Evaluation of credits completed in Bible schools is made according to the regulations governing all transfer work, as to the quality of work required, the maximum number of hours which may be transferred, etc.
5. Because of the wide variety of religion courses offered in Bible schools and because of the variations existing in course titles and course contents from school to school, Bob Jones University allows all transfer credits in religion on an equivalence basis in terms of courses and credits listed in this bulletin under the School of Religion. This assignment of credits is made on the basis of the contents

of the courses pursued elsewhere as compared with parallel courses offered in this institution. A major in religion is then held responsible on his comprehensive examination for the Bob Jones University courses which have been assigned as equivalent courses.

6. The University does not accept in transfer any work done in the field of religion by correspondence.

Admission as a Postgraduate Special Student

A student holding a bachelor's degree who wishes to secure additional training but who does not wish to follow a program of study leading to an advanced degree may enroll as a postgraduate special student. Such a student may take courses on the undergraduate level, depending on his objective in taking such special work. To register for a graduate course, however, the student must meet all prerequisites in the same manner as a student who takes the course to apply toward a graduate degree program.

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ADMISSION AS A GRADUATE STUDENT

The University offers graduate work in art, music, speech, radio and television, cinema, religion, and education. For admission to graduate standing, an applicant is to submit in writing to the Scholarship Committee his degree request for approval. He must hold a bachelor's degree from an approved college or university and must qualify for a program of study leading to a graduate degree. In order to pursue graduate work, a student must have an undergraduate major or its equivalent in the field chosen for graduate study. His undergraduate program of study must be substantially equal to the undergraduate program of study required in that particular field at Bob Jones University, including major, minor, and general requirements. Further details concerning specific require-

ments are given elsewhere in this bulletin under the School of Fine Arts, School of Religion, and the School of Education.

An applicant who meets all undergraduate requirements for admission to graduate work is given unconditional admission subject to the regulations regarding admission to candidacy which apply to all graduate students. An applicant who is deficient, but not seriously so, will be admitted with graduate standing, but such a student must remove all deficiencies before admission to candidacy is granted. An applicant whose undergraduate program of study is totally out of line with the graduate program he wishes to pursue will be advised to enroll in the appropriate undergraduate school to qualify for the bachelor's degree. In every case an applicant for graduate study must present an undergraduate record of such quality as to predict success on the graduate level.

The prospective graduate student must follow the regular procedure in filing application for admission and at the time of application must request a complete final transcript of his undergraduate work, showing the conferring of his degree, to be sent directly from his former institution to the Registrar of Bob Jones University. The graduate applicant will find it helpful to read the opening section on admission, "General Statement," which applies to all persons seeking admission to the University for the first time.

Students wishing to enter the graduate school with bachelor's degrees from Bible colleges will be accepted if their grades are adequate and if they meet the following conditions: The undergraduate work taken for the bachelor's degree must contain a total of at least 120 semester hours with a minimum of 70 hours in academic subjects.

Of these 70 hours, not more than 20 may be from the combined fields of music, speech, and commercial skill courses. Courses in Bible, Church Administration, or practical work will not be considered as applying toward the 70 semester hours of academic subjects required.

Applicants whose grades are satisfactory and who meet all but a few of the above requirements may be admitted to the graduate school as special students to make up their deficiencies. After doing this, they may become candidates for advanced degrees.

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Graduate Fellowships

Each year the University awards approximately 20 teaching fellowships to outstanding students who wish to pursue graduate work in art, music, speech, radio and television, cinema, religion, or education. A fellowship runs for two years and yields the holder his room, board, and tuition plus a cash stipend each month.

A fellowship instructor teaches half time for the University while carrying a maximum student load of 9-10 semester hours. The minimum residence requirement for graduate students holding these fellowships is four semesters of work completed during two academic years. While the majority of these fellowships are awarded to Bob Jones University graduates, a few are given to other graduate applicants of outstanding merit.

FINANCIAL INFORMATION

EXPENSES

For Full-Time Students

Tuition per semester * $450.00

The tuition rate of $450.00 is based on a maximum load of 16 semester hours. Any student who is permitted to enroll for additional hours above this maximum will be charged for the additional hours at the rate of $22.50 per semester hour.

Room and board per semester *	724.50
Matriculation fee per semester *	50.00
Student activity fee per semester *	10.00

* *Subject to change if necessary*

For Part-Time Students

The minimum semester load in the University on the undergraduate level is 12 semester load or credit hours. Although a dormitory student may occasionally be given special permission to carry fewer than 12 hours, all dormitory students are classified as full-time financially as well as academically. Day students taking 10 hours pay the full tuition charge. Part-time students will pay tuition and fees listed below.

Tuition per semester hour up to and including 9 hours *	$45.00
Matriculation fee (1 for each 5 hours) per semester *	25.00
Matriculation fee (over 5 hours) per semester *	50.00
Student activity fee (1 through 5 hours) per semester *	7.50
Student activity fee (over 5 hours) per semester *	10.00

* *Subject to change if necessary*

The $25.00 matriculation fee does not cover discounts at the Student Center or an artist series ticket. The $50.00 matriculation fee must be paid by all students taking more than five hours of work. This includes all graduate assistants.

DEFENDANT'S EXHIBIT 6

FORM L-339 (11-70)

[Letterhead of]
DEPARTMENT OF THE TREASURY

District Director
Internal Revenue Service

Date: Nov. 30, 1970

In reply refer to: 400:EO

Bob Jones University, Inc.
Greenville, S. C. 29614

Gentlemen:

The Internal Revenue Service, after careful study, has concluded that private schools with racially discriminatory admissions policies are not legally entitled to Federal tax exemption and that contributions to such schools are not deductible as charitable contributions. This position is applicable to all private schools in the United States at all levels of education. The enclosed statements discuss this position in greater detail.

The Service will continue to recognize the tax exempt status of a private school where it has adopted and administers; or will adopt and administer, a nondiscriminatory admissions policy in good faith, and publicizes the fact within its community. The benefits of tax exempt status and deductibility of contributions will, however, be challenged by the Service where a private school practices racial discrimination in its admissions policy.

We are now reviewing all rules and determinations issued to private schools in the United States in the light of this position. With but few exceptions, our present files on educational organizations do not contain information on admissions policies and related facts. Thus, this inquiry is being directed to all schools having Service rulings of tax exemption.

To enable us to determine your correct status, we ask that you answer the questions on page two of this letter. You may retain for your files the enclosed copy of this letter. If you wish, you may submit any documents you feel will have a bearing on the matter. Your reply should be made over the signature of a principal officer of your organization and should be returned to this office in the enclosed envelope within thirty days. If you are in process of clarifying or modifying your admissions policy, you may request an extension of time in which to supply additional information.

Your reply will be evaluated promptly, and you will be advised of our findings. If it appears that your exemption is brought into question, you will have an opportunity to present additional evidence and be heard before a decision is reached.

Thank you for your cooperation.

Sincerely yours,

/s/ H. M. McLeod
District Director

INFORMATION TO BE SUBMITTED TO INTERNAL REVENUE SERVICE

1. What are the present policies and practices of your school on admissions? ☐ Racially Nondiscriminatory ☐ Racially Discriminatory ☐ Other (Please explain.)

2. If you have a racially nondiscriminatory admissions policy, explain the manner in which it has been widely publicized. (Please furnish pertinent information from your catalog, local newspaper or other similar publications, and other supporting information demonstrating wide dissemination.)

3. If you are undertaking to modify or clarify your admissions policy, explain your new or modified policy and your proposed methods of publicizing it. If you have already taken action, please furnish copies of any documents by which your policy is being established and publicized.

I declare that I have examined this questionnaire, including the accompanying statements, and to the best of my knowledge and belief it is true, correct and complete.

Date	Signature of Officer	Title

Enclosures:

News Release dated 7/10/70

News Release dated 7/19/70

Self-addressed envelope

NEWS RELEASE

INTERNAL REVENUE SERVICE
Washington, DC 20224
Tel. (202) WO 4-4021

For Release: 4:00 PM, EDT, Fri.
July 10, 1970

IRS Announces Position on Private Schools

Washington, D. C.—The Internal Revenue Service announced today that it has been concluded it can no longer legally justify allowing tax-exempt status to private schools which practice racial discrimination nor can it treat gifts to such schools as charitable deductions for income tax purposes.

The Internal Revenue Service will proceed without delay to make favorable rulings of exemption immediately available to private schools announcing racially nondiscriminatory admissions policies and to deny the benefit of tax-exempt status and deductibility of contributions to racially discriminatory private schools.

The Service said that favorable rulings given to private schools in the past will remain outstanding where the school is able to show that it has racially nondiscriminatory admissions policies.

All private schools with favorable rulings outstanding will receive a written inquiry from the District Director of Internal Revenue and it is anticipated that in most instances evidence of a nondiscriminatory policy can be supplied by reference to published statements of policy or to the racial constituency of the student body.

Where a school fails to establish that it has a racially nondiscriminatory admissions policy, an outstanding ruling of exemption will be withdrawn. However, a school seeking to clarify or change its policies and practices will be given a reasonable opportunity to do so in order to retain its ruling of federal tax exemption. In any event, full opportunity to present evidence and be heard will be provided in accordance with usual revenue procedures and the right to appeal to the courts will be available. Similar principles will be followed in acting upon requests made by new schools for rulings.

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4:00 PM, EDT
7/10/70

NEWS RELEASE

INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224
TEL. (202) WO 4-4021

IR-1052

For Release: Sunday
July 19, 1970

Washington, D. C.—The Internal Revenue Service today announced it has issued favorable rulings of exemption to six private schools that have announced racially nondiscriminatory admissions policies. The schools are located in five different southern states.

The rulings were the first to be issued under the statement of position announced by the IRS on July 10 concerning the tax status of private schools. Other applications for exempt rulings, pending at the time of the announcement, which meet the stated standards will be processed expeditiously, the IRS said.

The IRS said the written inquiry on admissions policies to be sent to all private schools that currently hold favorable tax exemption rulings is now being developed. Inquiry letters are expected to be sent out by the 58 IRS district directors within a few weeks.

The six schools to which new favorable rulings of exemption were issued had provided the IRS complete information that they had a racially nondiscriminatory admissions policy announced within their respective communities.

Nathanael Green Academy, Inc.
Siloam, Georgia

Desoto School, Inc.
Helena, Arkansas

The Heritage School, Inc.
Newman, Georgia

Southeast Education, Inc.
Dothan, Alabama

The Gaffney Day School
Gaffney, South Carolina

Pamlico Community School
Washington,
North Carolina

In response to questions it has received, the IRS also issued a more detailed explanation of its July 10 statement of position on the tax status of private schools. In that statement the IRS said, in the future, favorable rulings of tax exemption would be available where schools announced racially nondiscriminatory admissions policies.

The IRS said its July 10 statement does not affect a school's ordinary admissions policies which have no relation to race. The IRS specifically added that a school's ordinary academic standards will not be affected.

The IRS explained that its July 10 statement is applicable to all private schools throughout the United States, except as limited by the order of a three judge Federal District Court in the District of Columbia, in *Green v. Kennedy and Thrower,* That court has ordered that rulings be issued in Mississippi only under terms and conditions approved by the court.

In its initial nationwide review of the present status of private schools, the IRS said that where a school has adopted and publicly announced a racially nondiscriminatory admissions policy, it will assume, in accord with normal procedures in requests for rulings, that such policy has been adopted and will be maintained in good faith. If subsequent examination by an IRS field office indicates

that a school has not administered such a policy in good faith, the tax exempt status of the school will be challenged.

The IRS also said that, should an existing ruling of a private school be revoked as the result of such a challenge, persons contributing to the school will be allowed to deduct contributions made prior to the date of the public announcement by the IRS of the revocation. This follows the usual IRS rules and procedures on contributions.

The IRS added that its statement of position on racially nondiscriminatory admissions policies would be applicable to all private schools, whether church related or not. Selectivity of students, as by a religious seminary, having no relation to racial discrimination would not be inconsistent with the IRS statement of position.

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7/19/70

DEFENDANT'S EXHIBIT 7

BOB JONES UNIVERSITY
Greenville, South Carolina 29614

Executive Offices

December 9, 1970

My dear Friend:

IT LOOKS AS IF BOB JONES UNIVERSITY WILL LOSE ITS TAX EXEMPT STATUS SHORTLY.

We have received from the Internal Revenue Service a notice that any institution that does not enroll black students without restriction will no longer be granted exemption from income tax and that gifts made to such institutions will no longer be tax deductible. I hope you will read very carefully the enclosed material explaining just why Bob Jones University does not accept black students. We are not "against" Blacks. Our Board simply does not feel it is in the best interest of either our white students or the Blacks themselves to enroll black students at the present time with conditions as they are.

If we are denied the same tax exemption privileges that other institutions have, the Executive Committee has unanimously determined to enter suit. It may cost us as much as $250,000 to sue the government, and it is a disgraceful situation that this present United States Administration, by its unfairness, puts a Christian institution in a position of having to spend the Lord's money this way. It has come to us from a rather direct source that President Nixon is solely responsible for pushing this through and that certain of the men in the Internal Revenue Service believe that this action is unfair and unAmerican and

that some of their lawyers seriously doubt that it will be sustained in a court of law; but the President, according to the information that has come to us, has forced the issue.

It is most significant that there is no question of cutting off the tax exemption of institutions that are training militant Blacks, revolutionaries, Communists, and arsonists. No attempt has been made to take away tax exemptions from institutions which have Communists and revolutionists on their faculty—men and women who are seeking to overthrow America and train young people for that purpose—but the government is trying to discriminate against a Christian institution that is peaceful, patriotic, and seeking to train spiritual young men and women who will go out and make a real contribution to America and who will not drop out of society and seek to overthrow "the Establishment."

If the income tax exemption can be used to blackmail educational institutions, the next step is to use it to blackmail churches. The National Council of Churches and liberal denominations would like nothing better than to see this pressure applied to independent, fundamental, Bible-believing churches to force them "into line." We feel, therefore, that the whole cause of Christ is at stake in this matter; and Bob Jones University is going to fight for fairness and freedom for all Christian educational institutions and churches in America.

Many of our friends have assured us that if this goes through, instead of cutting off their donations, they will double them; and I believe this represents the spirit of most of the people who support Bob Jones University. I am confident that out of this discrimination against this institution because of its religious convictions God is going to bring glory to Himself and rebuke to the tyrants in Washington.

We have until December 30 to file our statement, which must then be processed. We are going to wait until that date to file our statement if our attorney advises us to file at all. In any case, we are going to "stall" it as long as we can; and after it is filed, it will take them a few days at least to process it. THIS MEANS THAT ANY GIFTS MADE TO BOB JONES UNIVERSITY IN THE NEXT FEW WEEKS WILL BE TAX DEDUCTIBLE. I hope, therefore, our friends will give as generously as possible in these last two or three weeks of 1970 and that whatever they plan to do for us in 1971, they will do IMMEDIATELY AFTER THE FIRST OF THE YEAR SO THOSE GIFTS WILL APPLY TOWARD THEIR CHARITABLE DEDUCTIONS IN 1971. It may mean somebody is going to have to sacrifice, but Bob Jones University is sacrificing for this cause, too; and I know our friends are going to rally.

I know we can count on your prayers. Pardon this lengthy letter, but we wanted you to know the facts. Pray for us. God bless you.

Sincerely yours,

/s/ BOB JONES
President

BJ:jl

[EXHIBIT D]

DEFENDANT'S EXHIBIT NO. 8

EXECUTIVE COMMITTEE MEETING

September 1, 1971

At a specially called meeting (via long-distance circuit connection) of the Executive Committee of the Board of Trustees the following people discussed the Internal Revenue Service problem of integration as it concerns Bob Jones University: Dr. Bob Jones, Chairman; Dr. Bob Jones, III; Dr. Monroe Parker; Dr. Charles Bishop; Dr. Otis Holmes; Dr. Harold Kilpatrick; and Dr. R. K. Johnson, Secretary. Dr. Monroe Parker gave the opening prayer.

Dr. Jones reported that we were expecting a great year and that we had over 100 more students signed up this year than we had as of this date last year.

Dr. Jones explained the nature of the meeting by giving a report on the tax situation. He stated that he had heard through our lawyers that the government was getting ready to act, that he had made a quick trip to Washington to discuss the matter with Senator Strom Thurmond, and that Senator Thurmond had been able to delay the matter a week or two. He explained further that the government is at a loss to understand our position—to them it is inconceivable that we would rather lose our tax exemption than to submit to their demands.

Dr. Jones proposed that he and Dr. Bob Jones, III, had a conviction of heart that they would like to take some married Christian colored people. Dr. Monroe Parker favorably commented on this suggestion. As he traveled about the country, Dr. Parker said, people often ask why Bob Jones University could not take certain Christian colored people. Other members of the Committee stated that they had been asked the same question.

It was explained that all married couples live off campus so that there would be no problem of colored children on the campus. Dr. Bishop asked if we would be willing to take the children of these proposed couples in the Elementary School. There was a feeling that we might be able to take them through the fourth grade. Dr. Bishop asked if this would force us to take other students. The answer was "no." We would take only the qualified ones.

Dr. Bob Jones, III, explained that we are and always have been interested in helping colored people. Finding a way to help them without the undisputable problem of enforcing our regulations against interracial dating is the problem. It is felt that accepting married Negro students who meet all the other qualifications for admission would allow us to train the Christian Negro in whatever field he felt God had called him without having the school's Scripturally based convictions against interracial marriage agitated against.

The question was raised with regard to whether or not this move would satisfy the Internal Revenue Service. Dr. Bob Jones stated that our business is to train Christian leaders and that we will admit only Christian married students. There are always the radicals that will never be satisfied with any move we might make, he said. Dr. Jones quoted the representatives of the National Association for the Advancement of Colored People (NAACP) who had boasted, "The battle will be won in the bedroom and not in the courtroom."

Dr. Parker made the motion that at the discretion of the Administration certain married Christian colored students be admitted. Dr. Kilpatrick asked if this move would force us to sign the Compliance Act. It as explained that we would not have to sign it, and that we would not sign it. Dr. Kilpatrick then seconded Dr. Parker's motion.

The roll was called, and the motion was unanimously carried.

Respectfully submitted,

/s/ R. K. JOHNSON, Secretary
/s/ BOB JONES, Chairman

EXECUTIVE COMMITTEE MEETING
November 16, 1971

The Executive Committee met at 9:30 a.m. November 16, 1971, by means of a telephone conference setup. On the roll being called, all members responded as present. Dr. Parker presented the following motion:

> Be it resolved that the following appointments be approved by the Executive Committee:
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> Mr. Don Tice, as Manager of Financial Affairs; and Mr. Keith Mock, as Manager of Institutional Affairs, and that each shall have power to sign checks, deeds, transactions, or any other official documents in connection with matters covered by his own department but that all such checks, deeds, transactions, or other official documents be countersigned by the Treasurer of the University, the Secretary of the Board, the Chairman of the Board, or the President of the University.
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> Be it further resolved that Miss Dorreene Holmes be appointed Treasurer of the University with the power to act in all areas that come under the jurisdiction of the Treasurer, including the signing of checks, official documents, etc., with whatever limitations and requirements regarding countersignatures have been heretofore in force.

The motion was seconded by Dr. Kilpatrick and unanimously carried.

The question of electing someone to the Executive Committee for the unexpired term of Dr. R. K. Johnson was discussed, and the name of Mr. Robert D. Garrett was submitted by Dr. Holmes and seconded by Dr. Bishop to fill the unexpired term on the Executive Committee and to serve as Secretary-Treasurer for the Board. In the discussion which followed it was pointed out that Mr. Garrett has had wide business experience, that he is an alumnus of the University, and that he is presently a member of the Cooperating Board who has now moved

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In reporting on the progress of the Amphitorium, he mentioned that it would be at least June of next year before it will be finished. We plan to have the dedication with Dr. Paisley at Thanksgiving time that year, although we should be actually in the building at the opening of the school term of 1973. The steel is what is holding us up. The company who bid on the steel has lost $200,000 on the fabricating and erection of the steel and seem to have lost interest in the job. He then mentioned the crowded situation in the dormitories and other areas on the campus and said he didn't know how large the Lord wanted us to grow but that we are overcrowded even if we do not grow any more.

He mentioned again that we have the greatest internal harmony—the students are enthusiastic and the faculty are enthusiastic. It has been a difficult year financially, and our faculty have felt the pinch. He said we never take anyone on our staff who asks how much salary we offer.

Concerning the IRS situation, he explained the progress in our having won a temporary injunction against the IRS and told what that involved. He said the IRS was appealing that this next month. In July we should have to go to court in Richmond to hear that appeal. If we lost the exemption, we will lose our exemptions in other areas. For instance, our property will be taxable. He mentioned the recent court ruling along this line from the State of Wisconsin. He told how one man who is a lawyer told a friend of the school's that the trouble with Bob Jones University is that they are too honest. He said other schools said they would do such and such and didn't do it. The government doesn't care if the school does what it says; they just want the school to say it will do it to get them off the hook.

He then told of the trouble we are having with the Veterans Administration. They want to cut off funds to our veterans because we did not sign the Statement of Compliance. We have a friend who is willing to pay court costs if we will go to court on this, and we have a G. I. who is willing to be the one to sue. If we lose this first appeal, which is coming up in June, we will do this. We have about 400 boys in school on the G. I. bill, and probably half of them couldn't attend without the benefits.

Concerning the radio station license, he explained that we were going on our second year of operating without a license. The FCC has made some investigations but no decision on our case; so as long as they don't say anything, we will continue on the air. We have Negroes employed; so they cannot say we are discriminating. Dr. Jones mentioned the suit against King's Garden Radio Station in Seattle brought by an atheist who was denied employment at that Christian station. He said if they can get by with that, then every uncompromising Christian station will

have to close. We will soon begin working on our application for license renewal. It has to be renewed every three years; so the time is approaching. It takes one man almost a year to meet all the requirements of the application. It involves interviewing people in town.

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in evening out the previous savings. Food is getting scarce. We are concerned about famine. We have to buy boxcars of food when available or we cannot get it when we need it. We can store 17 boxcars of food here on the campus.

The cost of utilities has soared in Greenville. Because of the increased costs, we are having to go up on room, board, and tuition. Even that is not enough to keep pace with the cost of living, but it will help. Mr. Tice gathered the figures from 20 Christian colleges across the country, and we are the only one that charges under $2,000 a year. We cannot subsidize the cost of operation. We do not have anything to fall back on—not a denomination, the government, state aid, etc. If we jumped our costs to where we needed to, that would leave us with no place to go. After raising tuition to $3,000, as some schools have, then where can you go?

We are trying to invest in some property as we have funds since that is a hedge against inflation. We bought some good property on Wade Hampton Boulevard which we can probably triple our investment on. We are now negotiating for over 100 acres of land facing the Blue Ridge for the purpose of building a retirement village. Many people would want to come to Greenville because the University is here. We could operate a shuttle bus to the campus for their convenience. They would have the understanding that they buy these homes and when they die, the homes would revert to the University. Then we

could use them for faculty members when they retire. There would be a nursing care center also. We would farm this out to a company and pay them a commission for pre-selling the lots. People who lived there would pay for the cost of construction. We would pay a commission; and then when the people died, the property would come to the University. None of the University's money would be spent on the project.

Dr. Bob explained our progress with the FCC. He said this should be resolved within the next three weeks. We have filed for the regular three-year license renewal, and for the last three years we have been operating without our license. He explained the background of this. He thinks what is going to happen is that the FCC will let this thing slide. The man who launched the complaint has now resigned. Now they seem to be waiting until the routine renewal comes up in June. Two weeks after that we expect to have an answer. He thinks we will get the renewal. We have good lawyers working on it up there, and Dr. Bob has talked to the Commission. We are in compliance with their guidelines.

Concerning the V. A. situation, that is now in the courts. The V. A. said if the school would not sign the Act of Compliance, our students could not receive benefits. Actually, the aid does not come to the school but goes directly to the students; so this is not a valid requirement. They took the benefits away from all new applicants; however, the help to the former recipients was continued. We countersued, and the Government did not get its case prepared in the allotted time. They said if we were agreeable and if the court would give them an extension to prepare their case, that during the time the case was in the courts they would let our new applicants come under the plan. We had nothing to lose and everything to gain and

so agreed; so at the moment everything is all right. We are trying to stall as long as possible in the courts because this is our advantage. It is actually merely a case of religious discrimination.

Dr. Bob, III, brought the group up-to-date on the IRS situation. On October 29 the IRS served formal notice that donors to the University would not be entitled to deductibility for their gifts. As a result, we have seen a decrease in the giving. Many people have given gifts to charitable organizations we are directing them to that are doing a similar work to what Bob Jones University is doing.

Right now there is a conference pending for May 29 at the district level in Atlanta. They have written recommending revocation of our tax exemption. After this conference in Atlanta, there is one more appeal in Washington. At first we were not going to take advantage of these because it seemed that it would be to our advantage to start litigation immediately (to be engaged in litigation for about 3-5 years). The basis for our suit would be whether or not we have a right to our religious convictions, which convictions are against interracial dating and marriage. Our admissions policies excluding Negroes, of course, were set up just as a front-line defense against the possibility of intermarriage of the races.

Just recently, however, a cloud has come over the whole picture. About five weeks ago at the Fourth Circuit Court of Appeals in Richmond there was a decision rendered in the McCrary case which stated that all private schools were in violation of the law if they refused admission to blacks WHETHER OR NOT THEY ACCEPTED FEDERAL FUNDS. This was a shocking decision! None of us thought it would be upheld in the Fourth Court. It is now being appealed to the Supreme Court, and we will not know for

about 90 days whether they will hear it. If they do not hear it, the lower court's decision becomes the law of the land. If they do hear it, we feel that they may rule in favor of the Fourth Court, which means no private schools can exclude anybody on the basis of race. This is devastating if it becomes the law of the land; and if it does, we will have to exercise an option: We must, as law-abiding citizens, render to Caesar the things that are Caesar's but must also be careful to render to God the things that are God's. Our convictions are against interracial dating and marriage. If the law of the land says we have to open our doors to all races, then we must have a non-discriminatory policy or be in violation of the law, which would not be a good Christian testimony. Since our stand is not against admiting Negroes but against interracial dating and marriage, there would be no basis to disobey the law at that point. However (and this is just for speculation), if they went a step farther and said not only did we have to enroll the Negroes but we also must allow interracial dating, then we would have to close the school.

At this point Dr. Bob, III, recognized John Stophel, who moved that the following resolution be adopted:

> Recognizing the duty of every Christian citizen and every Christian institution to obey the laws of the land; and recognizing the fact that the laws and interpretations of the laws are undergoing great changes from year to year; and recognizing that it is impractical to call the Board together for all decisions that must be made with regard to changes in policies of the University made necessary by changes in the laws and court interpretations of such laws,
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> Be It Resolved, that the Board of Trustees of Bob Jones University hereby authorizes the officers of the University to make such changes in policies as are

necessary to conform to the requirements of the laws from time to time, without yielding to arbitrary and capricious rulings and regulations of government agencies, but abiding by decisions of the courts, guided by the University counsel, so long as such changes are not contrary to the commands of Scripture upon which the University's position is founded; and the officers of the University are authorized to use their judgment and discretion in connection with these matters so as to keep Bob Jones University faithful to the fundamental principles of the Faith as found in the Word of God and the methods of operation that have contributed positively to the education and training at Bob Jones University of thousands of Christian leaders serving God effectively around the world.

Dr. Bob, III, explained that we have perhaps 40-60 days before Washington calls the curtain down on us and removes our tax exemption. Our attorneys say we are going to be in an awful position if we have the exemption revoked and then three months later the law of the land is changed and we have to open our doors anyway. That will leave us in a bad bargaining position as we apply to regain our exemption; however, the Supreme Court is not going to hear this until after our decision is rendered. We have decided to appeal this at every level and then at the very last minute, when we know a decision is about to be rendered on the McCrary case, we will say that because of the McCrary case, we realize we cannot legally bar the blacks from enrolling and we have no choice but to enroll them. This would mean they probably will not any longer have grounds to try to revoke our exemption retroactive to 1970. If they revoke it within the next two months, if our position remains the same, they will go back from

1970 until today and from now on. That is where the $3 to $4 million liability mentioned in the financial report comes in. If, however, our admissions policies change because the law says we have to change them, we will not then have that liability back to 1970 and everything will be current from today on.

But we still may not be able to keep our exemption even if we open our doors to the blacks because the IRS published in its Register some months ago the statement that in order to be exempt, not only must a school have open admissions policies but it also must publish those policies and actively seek the admission of minority group members and also that its faculty must be integrated in the same ratio as the student body. This would be impossible for us; we could not meet that last criterion; so ironically, we are probably going to be forced to open our doors to Negroes and still lose our tax exemption.

Following this discussion of the situation, Mr. Erhard seconded Mr. Stophel's motion that it be adopted; and it was passed unanimously.

Dr. Van Gelderen said they have two colored students in their school and that the solution they found was to ban dating without express permission from the parents. He wondered if we could not require parents' permission for dating. The problem on the college level, however, is that the majority of our students are above the age where they would need parental permission; and it was also brought up that we would then be in trouble under "child abuse" and "children's rights" legislation!

Concerning the Veterans Administration case, Dr. Bob, III, said that on May 6 they heard the oral arguments. The VA has taken the position that it is subsidizing Bob Jones University when it gives benefits to men who come here for their training, and they are seeking to deny bene-

fits to all future applicants. Our position is that the government cannot "have its cake and eat it too." If they say they are supporting us by allowing benefits to our students, then they are also supporting other religious educational institutions, which the courts say they cannot do. Therefore, our case says if they take away our students' benefits, they must desist from giving benefits to anybody attending any religious school, and he doesn't think they are quite ready to go that far. We enroll about 250 boys a year under the G. I. benefits. We should know the decision within a few weeks. The McCrary case may have some bearing; and if it does, it will not be to our benefit.

(At this point Dr. Bob, III, mentioned a similar case in the Fifth Circuit Court in New Orleans. If the decision there agrees with the McCrary decision, then the Supreme Court will probably not hear the McCrary appeal and it would automatically become the law of the land. Also there is a case in Wheaton involving recreational facilities which barred the blacks. In the decision it was decided that the directors of the facility were personally liable for damages to the plaintiffs; so it may come to the place where our Board members would be liable to personal suits because of their connection with the University. Dr. Bob hastened to assure everyone that if it ever came to the point where a Board Member would come under legal attack on the University's behalf, the University would stand with him and underwrite any legal expenses. We are working on getting some type of insurance to protect the Executive Committee members.)

The Chancellor remarked that all this is part of the Satanic attacks we can expect, and we must recognize that we are facing the devices of Satan. We are to expect persecution, but "greater is He that is in you than he that is in the world."

Dr. Bob also expressed appreciation for the Administration and said the school has had great burdens this year but there has been wonderful cooperation among the faculty and staff. The more we are at war with the Devil, the more harmony we have inside; and we thank God for this.

Dr. Bob appointed a committee made up of Mr. V. D. Rupp, Mr. Harry Newcomer, and Dr. Wayne Van Gelderen (chairman) to draw up a resolution expressing sympathy to the families of the following deceased Board Members: Mr. Robert Collins, Mr. B. S. Longenecker, and Mr. Hugh York (resolution attached).

Dr. Bob then announced briefly the proposed World Congress of Fundamentalists to be held in Edinburgh. He explained that the site had been chosen because that is where many of the early Fundamentalists were martyred and also because it was felt it might stir up some of the Christians in Britain who are so cold. He said Christians who are taking a stand are going to have to take a stronger stand in these days. People are looking to Bob Jones University for leadership, and we need God's grace to help us meet the responsibility.

In closing, the Chancellor thanked all the Board members for their support and prayers and assured them of his prayers for them daily. He said he appreciates the financial help they are and emphasized that we did not select Board Members because of the possible financial help they could give (or many would not have been selected!) but because they are Godly people. He said, however, that sometimes the Board Members are in a position to turn gifts our way and encouraged them to do so.

We filed about two weeks ago in the District Court of Columbia a suit against the IRS charging that they removed our tax deductible status illegally and unconstitutionally. They now have 60 days in which to reply, and

the case may drag on to three years. In a meeting with the IRS in November in Washington, we were told that we could believe what we wanted to believe but that if we wanted our exemption, we could not practice it! We indicated to them that we no longer discriminate because of race since it is now illegal to do so, but that was not enough for them. They say we cannot keep the students from dating interracially. If they can challenge that rule, they can challenge any rule we have—the rule against drinking, smoking, etc. We are not discriminating in that rule—it applies to everyone alike. Whether we win this case or not, it is important that we fight it, because if we did not, then everyone who has a school that does not allow interracial dating would lose its tax exemption. This case has far-reaching consequences.

He said he wonders just how the Lord is going to turn all this to His glory and victory. We are in perfect peace about it, however, because we know He will. We have tried, since losing our tax exemption, to see what the Lord is saying. What should we be doing now that we had not been doing otherwise? We don't want the government to get this money; so how can we spend it so that they don't get half of it? We can't spend it here on the campus for buildings, etc. One thing we are going to do for a year is to have a national TV ministry. We did not have the money for this sort of thing before; but since we cannot keep the money here without its being taxed, we will use it in this way. We want to get about ten stations the first year. We are negotiating with a Detroit outfit to come down and do the actual filming once a month. This will cost money, but hopefully by the end of the year these stations will be self-sustaining and we can branch out to other cities. If the needs are not met, we will probably discontinue them. There is a lot of religious programming on television now but not the right

kind of music or the right kind of preaching. "SHOW MY PEOPLE" will be the name of it, taken from the verse in Isaiah 58. We will address ourselves to the Christian people in America, and the unsaved will watch their guards down and in the meantime the Word of God will reach them too. We will try to show the Christian people their responsibilities and transgressions. We believe the Lord is pushing us to do some things such as this that we have never considered before. We will be spending hundreds of thousands of dollars with the Press and the television ministry. The Lord is telling us to reach out; so we are going and trusting Him to supply the needs.

The IRS and HEW has taken the position that aid to the student is aid to the college. Hillsdale College and Brigham Young University have had students receiving aid through National Defense Loans and other government-backed loans and the G. I. bill and are now being harassed and told they are under all federal rules concerning anti-discrimination because of that. Our students lost the right to the G. I. bill earlier, and we see now that it is the best thing that ever happened because this is now being done to other colleges. Hillsdale petitioned the White House to stop it, and the White House said, "We consider the Bob Jones University case has already settled the issue and we won't consider it."

We have two black students—one is a fine young married man in the preacher boys' class, and the other is a girl from Barbados who is living in the dorms. The boy, if he will stay humble and will let God use him, will be a great voice to the black community. He has been elected president of the sophomore class; so 50 percent of our black students are in leadership in the student body!

He closed by soliciting the promotion of the Board across the country and asked them to put in a good word wherever possible for Bob Jones University.

DEFENDANT'S EXHIBIT 11

WHY

BOB JONES UNIVERSITY WAS FOUNDED

WHY

IT HAS NEVER SOUGHT MEMBERSHIP IN A

REGIONAL EDUCATIONAL ASSOCIATION

The following is the second paragraph of the charter of Bob Jones University. All executives and members of the faculty sign once a year a creed covering the doctrinal statements in this paragraph.

"The general nature and object of the corporation shall be to conduct an institution of learning for the general education of youth in the essentials of culture and in the arts and sciences, giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures; combating all atheistic, agnostic, pagan, and so-called scientific adulterations of the Gospel; unqualifiedly affirming and teaching the inspiration of the Bible (both Old and New Testaments); the creation of man by the direct act of God; the incarnation and virgin birth of our Lord and Savior, Jesus Christ; His identification as the Son of God; His vicarious atonement for the sins of mankind by the shedding of His blood on the cross; the resurrection of His body from the tomb; His power to save men from sin; the new birth through the regeneration by the Holy Spirit; and the gift of eternal life by the grace of God. This charter shall never be amended, modified, altered, or changed as to the provisions hereinbefore set forth."

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We are often asked why Bob Jones University was founded, and we are sometimes asked why the institution does not hold organic membership in a regional educational association. In order to avoid unnecessary correspondence and verbal explanation, we decided to print the answers to these inquiries and have the information available for those who desire it.

Those on the inside of the organization of Bob Jones University know that there is no possible human explana-

tion for what has been accomplished. The total assets of the University, including buildings and equipment, are valued at approximately $40,000,000. The institution is a corporation not for profit, controlled by a Board composed of approximately fifty Christian men and women from across the United States.

We matriculate each year more than 5,000 students. These young people travel probably a greater average distance to attend the University than students do to attend any other school in the world. The University enrolls students from all the states and more than thirty foreign countries. About one-third of these young people are preparing for the ministry, the mission field, or some other type of Christian service. Since the University is no more a preachers' school or missionaries' school than it is a teachers' school, a business school, a music school, a speech school, or some other kind of school, this large enrollment of ministerial and

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missionary students is naturally the result of the great spiritual emphasis of the institution.

Young people can get good music, speech, and art training without additional cost above academic tuition in this institution where at all times an effort is made to give the Lord Jesus Christ the pre-eminent place. Greek and Hebrew are an integral part of our ministerial training; and, in addition to these, a number of other ancient and modern languages are offered every year.

The religion in our school is a natural sort of thing. We teach our students that life is not divided between the secular and the sacred but that all legitimate things are sacred to a Christian. We tell them that learning a lesson

or doing the routine work of school life is just as sacred as singing in a choir or preaching a sermon. There never has been an educational institution that had a more practical approach to the everyday problems of life than has Bob Jones University.

Dr. Bob Jones, Sr., the University founder who preached for more than seventy years, was never in favor of the organic union of the Protestant religious denominations. He learned from experience that spiritually minded, orthodox Christians could work together without any compromise if the first emphasis was put upon the commonly accepted fundamental essentials of our Christian faith rather than upon

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some doctrinal interpretation that divides evangelicals. He saw cultured, formal, conservative theologians and religious conservatives who were inclined to be rather emotional work together in evangelistic campaigns; and he found that they reacted on each other in a most helpful way.

He noted that there was an idea abroad among certain religious liberals that if a person believed in what is usually called the "old-time religion," he must, so to speak, have a greasy nose, dirty fingernails, baggy pants, and he mustn't shine his shoes or comb his hair. Dr. Jones met literally thousands of young people in the conservative religious groups who were greatly interested in the best possible cultural training but who desired such training in an educational institution where they could build their Christian faith. He also met hundreds of young people from conservative Christian homes who went off to a certain type of educational institution seeking culture and

who later came back to their parents having lost their faith and sometimes their morals.

While carrying on his evangelistic work he, of course, came in contact with a number of good, orthodox, denominational schools as well as a number of good, orthodox, independent schools. These institutions were, of course, doing a good work in their special fields of Christian service. The orthodox, denominational school, however, were founded not

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just to emphasize the fundamental doctrines which are generally accepted by all evangelicals but also to teach and emphasize special doctrinal interpretations held by the denominations which these schools represent. Naturally, young people from evangelical groups who do not accept such special denominational interpretations are not inclined to attend these denominational schools. If a denominational school does not emphasize the special doctrines of the denomination which it represents, it, of course, is not true to the denomination which founded it and supports it financially. The more a denominational school emphasizes its special denominational doctrinal positions, the less appeal it has to evangelical young people who do not accept such doctrinal interpretations. There are denominational schools that are no long.. denominaeither interdenominational in spirit or very .beral religiously. Most of the independent, orthodox schools were, of course, founded to give emphasis to the generally accepted fundamental doctrines of the Christian faith; but in addition, these schools either in their beginning emphasized some special doctrinal interpretation or later developed a doctrinal emphasis or an educational slant which limits their appeal to certain groups of evangelical young people.

So after prayerfully considering the matter, Dr. Jones felt that the Lord wanted him to found a school that would meet a growing need

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by appealing to an unusually fine type of evangelical young people all over the world, regardless of their denominational affiliation. He knew that such a school must be uncompromisingly orthodox and definitely and spiritually evangelistic. It must teach its students that whether they are preachers, missionaries, teachers, lawyers, physicians, businessmen, businesswomen, housewives, farmers, or whatever they are, their main business in life is to witness for and win people to the Lord Jesus Christ. Such an educational institution would have to have administrative officers who are not only in sympathy with the doctrinal position and evangelistic emphasis of the school but who are also especially trained to fit into the program. The training of such an administrative staff has been our most difficult task, but God has helped us accomplish it.

The Founder knew that the educational institution he was going to found and build had to have the very highest cultural and academic standards. Such standards were essential to the purpose he had in view—that is, training Christian young people to go out into the world as good show-window material for the Lord Jesus Christ.

Dr. Jones consulted the most progressive and up-to-date educational authorities he knew and asked them to standardize the school academically according to the purposes he had in mind. These educators standardized the

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academic work so satisfactorily that the school was accredited by the state university in just a few weeks after it

opened. We have always insisted that an educational institution with the right kind of spiritual standards will maintain the highest possible academic standards.

After the University was well established, we checked very carefully all the standards of the Southern Association of Colleges and Secondary Schools to see whether it would be possible for our institution to hold organic membership in this Association without sacrificing any of our administrative policies which set us apart for the special task to which we felt God had called us. After careful consideration and much thought, and after advising with our scholarly, educational friends who had helped us in setting up our standards in the beginning, we were convinced that Bob Jones University should not ask for membership in the Southern Association.

The University has some administrative policies that, as far as we can observe, no other institution has. These policies are essential to the success of the school and the carrying out of the purposes for which the institution was founded. We sincerely believe that we can render better service spiritually and even educationally without holding organic membership in an association. When the Southern Association was founded, there was no Bob Jones University and no other educa-

tional institution within the bounds of the territory covered by the Association which had exactly the same religious and administrative slant that our institution has; so, naturally, when the Association set up its standards for admission, the administrative policies of an institution that was not then in existence could not have been taken into consideration.

Every educator who knows the kind of plant and equipment and efficient business methods, the academic standards, and the achievements of Bob Jones University knows that this institution could qualify for membership in the Southern Association of Colleges and Secondary Schools. We wish to make it emphatically clear that the only reason we do not apply for membership in the Southern Association is that we do not wish to take any chance of having our administrative policies controlled or even influenced by any educational association or any group anywhere in the world. The President of the University and most of the Administrative officers have been trained not only in Bob Jones University but also in leading universities in America. These executives have a better understanding of what is necessary in our administrative approach to our special problems than any group of individuals or any organization could possibly have.

For example, we feel it is essential to maintain a unanimity of doctrinal position and purpose and a truly fundamental, Biblical

approach to Christianity in our faculty, not only in doctrinal beliefs but also in the Christian application of these beliefs toward life. This is impossible unless the Administration, which understands the over-all aims and goals of the University, maintains control over its faculty without being subjected to pressures of committees or individuals who are not born-again Christians or who may fail to understand the unique emphasis and goals of Bob Jones University. We believe that only born-again Christians should set the policies for a Christian school; and we feel that we should be free to carry on the program of the University as God leads us without any outside agency,

governmental or private, attempting to dictate the manner in which this program is carried out.

We believe that teachers should have full academic freedom within the stated purposes of the University. We also believe that the University should have freedom under the Constitution of the United States to carry out its purposes without outside interference and without being discriminated against because of our desire for freedom from control.

The fallacies of accreditation are well known to educators. For example, any official listing of regionally accredited schools includes almost every school within the boundaries of the association and makes no distinction between those colleges which are barely meeting the minimum requirements and those which are

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outstanding in their educational accomplishments. Also, when a college becomes regionally accredited, not only are the credits of its present students recognized but also the credits of its past graduates are given full recognition, even though the school was not accredited when they were in attendance. It is evident from just these two facts that regional accreditation has little or no real value in determining a specific institution's standards.

Bob Jones University is known as the "World's Most Unusual University." In setting up requirements based on the practices and standards of other schools and forcing colleges to bring their practices into conformity, the regional association tends to destroy the individuality of its member schools. While they profess to encourage experimentation, those experiments must meet the association's approval if they differ from the usual pattern. We do not want to sacrifice the unique approach of this institution to the confining restrictions of membership in a regional association.

Although the latest revision of the Standards for Colleges of the Southern Association does not contain this paragraph, earlier editions of these standards stated: "If adequate information were obtainable in regard to the attitudes and achievements of those who have attended an institution, it would serve as a sufficient single standard for accrediting."

[11]

This simply says that if you can show that you have delivered the goods, you had the goods to deliver. Bob Jones University would be glad to join any educational association on the basis of its academic achievements and the results which it has accomplished and is accomplishing, with the understanding that the membership of the institution would cease if at any time it did not continue to produce the academic and other results which it has produced and is producing. It is our opinion that under our system of government the only way any educational institution should be judged or accredited is by the results the institution produces.

The educator and the American public have the right to ask the question, "Is higher education producing?"; and every college or university should be able to adequately demonstrate the answer to this question. Bob Jones University, through the years, in the various areas of its emphasis, has been achieving outstanding results as judged by its accomplishments in various fields. For example, in our School of Education, all of our graduating seniors take the National Teacher Examinations which are prepared and administered on a nationwide basis. For the last 20 years, the average score of our students has been above the national average. Over 1,500 of our graduates have been certified and have taught in 42 of

the 50 states of the Union. Bob Jones University meets all of the academic requirements for teacher training

[12]

in the State of South Carolina and will continue to do so.

The accounting majors in our School of Business Administration take the nationally administered American Institute of Certified Public Accountants Examination their senior year. Every year their average score has been above the national average.

In our School of Fine Arts, the Division of Cinema and its production unit, Unusual Films, have been recognized throughout the world for the excellence of their Christian and educational motion pictures and for the quality of training offered. In a survey of the University Film Foundation as reported in *Motion Picture Production Facilities of Selected Colleges and Universities*, it is stated, "There is probably no other institution in the United States or abroad which is so well equipped in relation to the number of students being trained." The productions of Unusual Films have won numerical and international honors.

In art and in music, our students have won top honors in state and regional competitions. Authorities have acclaimed our Shakespeare and opera productions as outstanding.

These examples are illustrative of the high standards maintained in the total University program, and our record is our assurance to other universities and to the public that we are

[13]

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Jones University would be glad to join any educational association on the basis of its academic achievements and the results which it has accomplished and is accomplishing, with the understanding that the membership of the institution would cease if at any time it did not continue to produce the academic and other results which it has produced and is producing. It is our opinion that under our system of government the only way any educational institution should be judged or accredited is by the results the institution produces.

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These examples are illustartive of the high standards maintained in the total University program, and our record is our assurance to other universities and to the public that we are

[13]

producing quality results.

Even though students come to Bob Jones University because they want its practical, Christian philosophy and special spiritual and cultural emphasis, some of these students find it financially impossible to finish their work here and some of them, of course, are interested in some major which our institution may not offer. Such students transfer to undergraduate schools near their homes and finish their college work. We have kept up with most of these undergraduate students, and they have done god work in the undergraduate schools to which they have transferred.

For a number of years Bob Jones University graduating seniors have taken the Graduate Record Examinations, and we do not recommend any of our graduates to grad-

uate schools unless they make satisfactory scores on these examinations. A few graduate schools, however, have accepted some of our graduates whom we did not officially recommend, and even these graduates have made good records. Each year approximately one-third of our graduates enter graduate schools throughout the country.

We wish to assure the presidents and deans of universities and colleges everywhere that any young person who makes a satisfactory academic record in Bob Jones University can make a satisfactory academic record in any educational institution. As long as our institution delivers the goods, the fair-minded executives

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of our American educational institutions will continue to do what they have done in the past, and that is to accept Bob Jones University graduates into their graduate schools and also to transfer undergraduate credit when the courses that have been completed by our students are in line with similar programs of study to be pursued at their institutions.

The administrative policies of Bob Jones University are based upon what we sincerely believe is a spiritual and Christian approach to all the problems, including the academic problems, of Bob Jones University. And under no circumstances will Bob Jones University sacrifice any administrative policy which it considers necessary to the success and achievement of the purpose for which this Christian educational institution was founded.

We should like to ask our praying friends to pray daily for Bob Jones University. We are in this educational business for the good we can do and for no other reason.

[15]

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action File No. 76-775

Bob Jones University

v.

United States of America

JUDGMENT

[Filed December 27, 1978]

This action came on for trial before the Court, Honorable Robert F. Chapman, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the Plaintiff Bob Jones University, recover of the Defendant United States of America, the sum of Twenty-One and 00/100 ($21.00) Dollars, which represents a refund of the Federal Unemployment Tax Act (F. U. T. A.) tax previously paid; and, the action is hereby dismissed.

Dated at Columbia, South Carolina, this 27th day of December, 1978.

MILLER C. FOSTER, JR.
Clerk of Court

By /s/ (Name Illegible)
Deputy Clerk

Entered 12/27/78

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action No. 76-775

Bob Jones University,

Plaintiff,

v.

United States of America,

Defendant.

ORDER

[Filed January 11, 1979]

It has been called to the attention of the Court by defendant that the Order filed in this action December 26, 1978, being confined to a decision as to the tax status of plaintiff for the year of 1975, did not dispose of defendant's counterclaim. The holding of the Court in this earlier order determined that plaintiff was entitled to tax exempt status under 26 U. S. C. § 501(c)(3) for the year in question. It is apparent that these findings of fact and conclusions of law also support a decision that plaintiff was exempt from taxes under this provision of the Code for those years encompassed by defendant's counterclaim. Accordingly, under 26 U. S. C. § 3306(c)(8) plaintiff was exempt from those F. U. T. A. taxes alleged to be owing in defendant's counterclaim.

IT IS, THEREFORE, ORDERED that, based on the Order of this Court filed December 26, 1978, defendant's counterclaim be, and the same is hereby, dismissed.

AND IT IS SO ORDERED.

/s/ ROBERT F. CHAPMAN
Robert F. Chapman
United States District Judge

January 11, 1979
Columbia, South Carolina

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil No. 76-775

BOB JONES UNIVERSITY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

AMENDED NOTICE OF APPEAL

[Filed February 27, 1979]

Notice is hereby given that the United States of America, defendant above-named, hereby appeals to the United States Court of Appeals for the Fourth Circuit, from the Orders of the Court entered on December 26, 1978 and January 11, 1979, respectively, and the Judgment entered on December 27, 1978.

STEVEN SHAPIRO
Attorney
Department of Justice
Tax Division
414 - 11th St., N. W.
Washington, D. C. 20530

THOMAS E. LYDON, JR.
United States Attorney

By /s/ JAMES D. McCOY, III
James D. McCoy, III
Assistant U. S. Attorney
Greenville, S. C.
Attorneys for Defendant

IN THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CIVIL NO. 76-775

BOB JONES UNIVERSITY,
Plaintiff

v.

UNITED STATES OF AMERICA,
Defendant

NOTICE OF APPEAL

[Filed March 13, 1979]

Notice is hereby given that the United States of America, defendant above-named, hereby appeals to the United States Court of Appeals for the Fourth Circuit, from the Order of the Court entered on February 28, 1979.

THOMAS E. LYDON
United States Attorney

J. D. McCoy
Assistant United States Attorney

By: /s/ STEVEN SHAPIRO
Steven Shapiro
Attorneys for Defendant
Department of Justice
Tax Division—414—11th Street, N. W.
Washington, D. C. 20530

STATEMENT OF DIRECTOR OF ADMISSIONS, BOB JONES UNIVERSITY, MAY 29, 1975

Because Bob Jones University is a law-abiding institution, the following admissions policy was adopted on May 29, 1975:

> Along with all other educational institutions, Bob Jones University is now required by law to admit students of any race to all rights, privileges, programs and activities generally accorded or made available to students at the University; and the University does not discriminate on the basis of race in the administration of its educational policies, admission policies, scholarship and loan programs, and athletic and other administered programs subject to and in conformity with the University's religious beliefs and practices as embodied in its rules and regulations, including, but not limited to: (1) Applicants and/or students who are partners in an interracial marriage will be denied admission and/or expelled. (2) Applicants and/or students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be denied admission and/or expelled. (3) Applicants and/or students who date outside their own race will be denied admission and/or expelled. (4) Applicants and/or students who espouse, promote, or encourage others to violate any of the University's rules and regulations, including those set forth above, will be denied admission and/or expelled.
>
> DIRECTOR OF ADMISSIONS

Amicus Brief

1

81-3

NO.

Office-Supreme Court, U.S.
FILED
AUG 3 1981
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE CENTER FOR LAW AND RELIGIOUS FREEDOM OF THE CHRISTIAN LEGAL SOCIETY, AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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NO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for A Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE CENTER FOR LAW AND RELIGIOUS FREEDOM OF THE CHRISTIAN LEGAL SOCIETY, AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Interest of *Amicus Curiae*[1]

The Christian Legal Society (CLS) is a non-profit Illinois corporation founded in 1961 as a professional association of judges, attorneys and law students committed to the historic Christian faith. It has over 3,000 members throughout the United States. The Center for Law and Religious Freedom (The Center) was established as a division of CLS in 1975 to ensure, protect and promote the freedom of Christians in the exercise of their faith under the guarantees of the United States Constitution. CLS, through The Center, undertakes to marshal the necessary legal resources to respond whenever the rights of Christians to exercise and express their faith are threatened.

CLS, through The Center, publishes a variety of materials and sponsors local and national conferences providing continuing legal education in constitutional law, federal practice and procedure, state and federal taxation and, generally, law affecting non-profit organizations. The Center's national membership and professional resources enable it to study legislative trends and case developments and to focus attention upon unconstitutional incursions upon religious freedoms which might otherwise go unrecognized. The Center has previously filed *amicus* briefs in this Court in cases involving questions of religious freedom.

In the case *sub judice,* the Internal Revenue Service (the IRS) has been permitted to deny tax exemption to a religious organization which, in the view of the IRS, does not conform to what the IRS perceives to be "public

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[1] The parties have consented to the filing of this brief and their letters of consent are being filed with the Clerk of this Court pursuant to R. 36.1 of the Rules of this Court.

policy." The decision below can therefore have a serious impact upon all religious organizations throughout the nation with respect to practices going far beyond the factual context of petitioner's case. Neither CLS nor The Center endorses petitioner's position on interracial dating and marriage. Nevertheless, because "public policy" is so utterly undefined and indefinable, the IRS may, if the decision below stands, condition tax exemption of religious organizations on their conformity to whatever the IRS believes to be the prevailing public sentiment. This continuing threat to all religious institutions is a matter of great concern to *amicus*.

This brief is filed to provide the Court with the views of *amicus* on aspects of this case which may not otherwise be adequately addressed.

Summary of Argument

The First Amendment's prohibition against "an establishment of religion" or laws "prohibiting the free exercise thereof" has, in the case at bar, come into conflict with the effort of the IRS to enforce its stand against distinctions—any distinctions—based on race. Petitioner was found to be a religious organization sincerely holding religious beliefs against interracial dating and marriage. The Fourth Circuit has held that the practice of those beliefs justifies a denial of tax exemption.

No Act of Congress has spoken to the issue of interracial dating or marriage as a condition of tax exemption. Nevertheless, on vague grounds of "public policy" the Fourth Circuit has authorized the IRS in effect to penalize a religious institution which does not keep in step with the view of the IRS on this very personal matter.

ARGUMENT

I. There has been a significant infringement of religious rights under the First Amendment.

This Court has long guarded the sensitive border bebetween First Amendment religious freedoms and legitimate state interests to avoid any unnecessary conflicts between the two. Only a compelling state interest will allow the government to burden the free exercise of religion. *Sherbert* v. *Verner,* 374 U.S. 398, 406 (1963); *Wisconsin* v. *Yoder,* 406 U.S. 205, 215 (1972). The government must not interject itself into the internal affairs of religious organizations, particularly where there is a danger of potential entanglement. *Lemon* v. *Kurtzman,* 403 U.S. 602 (1971). Most recently in *N.L.R.B.* v. *Catholic Bishop of Chicago,* 440 U.S. 490 (1979), this Court held that the National Labor Relations Board could not assert jurisdiction over church-operated schools in Chicago. Since Congress had never expressly directed that religious schools be made subject to the N.L.R.B., the Court declined to extend the Board's jurisdiction by implication into such sensitive areas. Everything that went on in such schools would have been subject to review by the N.L.R.B., creating entangling church-state relationships of the very kind the First Amendment sought to avoid.

So also in the present case, if the IRS is authorized to deny tax exemption merely on the basis of its view of "public policy", which in this case conflicts with the parietal rules of a religious school, then very little that goes on in a religious organization might not give rise to further interference. The Revenue Procedure which the IRS has applied here (Rev. Proc. 75-50, 1975-2 C.B. 587 (1975)), by its very terms asserts a right to review all school activities, policies and programs to ensure that a racially nondis-

criminatory policy has been adopted.[2] Even on this issue, the federal entanglement will be thorough and pervasive.

Amicus fears that this issue of racial discrimination is but the thin end of the wedge. By letter to the IRS dated March 20, 1978, Jeffrey M. Miller, Assistant Staff Director for Federal Evaluation of the United States Commission on Civil Rights, with reference to church and other private schools, has already demanded that the IRS "specifically prohibit racial, ethnic and sex discrimination in the treatment and selection of faculty."[3]

The same argument that gives the IRS power to deny tax exemption to those who discriminate on the basis of race would give it the power to deny an exemption to those who discriminate on the basis of sex, age, religion, ethnic background, or whatever other policy the IRS may choose from time to time to favor. Alleged racial, ethnic or sexual distinctions could be said to exist, or might indeed exist, in dormitory assignments, dining facilities, class assignments, athletics, grading, student loans, employment opportunities or disciplinary practices. Would the IRS be justified in denying tax exemption to seminaries or

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[2] "[A] racially nondiscriminatory policy as to students means: the school admits the students of any race to all the rights, privileges, programs and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs." (Rev. Proc. 75-50, Sec. 3.01, 1975-2 C.B. 587 (1975)).

[3] Neuberger and Crumplar, *Tax Exempt Religious Schools Under Attack: Conflicting Goals of Religious Freedom and Racial Integration*, 48 Fordham L. Rev. 229, 272 (1979), citing the statement of William B. Ball, *Tax-Exempt Status of Private Schools: Hearings Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 96th Cong., 1st Sess. 298 (1979).

yeshivahs because they do not train *women* to be priests or rabbis, or do not let them teach theology?

Religious distinctions themselves might be seized upon as contrary to public policy. Note the recent case of *Oral Roberts University* v. *American Bar Association*, No. 81-C3171 (N.D. Ill., filed July 17, 1981) where a religious college successfully defended its right to the accreditation of its law school despite its practice of admitting only students who subscribed to specific Christian beliefs. Could the IRS deny exemption to church schools that did not accept atheists as students or teachers?

Arguably, all distinctions may in some sense be against "public policy." But that does not give officialdom a roving commission to impose its views on others, particularly where that would violate sincere religious beliefs and constitute the governmental bureaucracy as a watchdog over the practices of religious institutions.

To deny tax exemption on the vague ground of "public policy" will inevitably affect religious beliefs and practices. If the state directs that the practice of certain beliefs will entail heavy financial burdens, those beliefs are threatened while other beliefs more consonant with official state policy are favored. The resulting entanglement is apparent.

If the policies of the IRS are compatible with the religious beliefs of one sect, that sect would have no difficulty in obtaining a tax exemption, while a different sect, out of step with policies approved by the IRS, would be unable to do so. This creates the double evil of tending to "establish" the one sect and of preventing the second from freely exercising its faith. It would have the indirect effect of imposing a federal presence on religion, quite contrary to the fundamental premise of the First Amendment.

II. Congress has not demonstrated any affirmative intention to interfere with parietal rules of private religious institutions.

As in *N.L.R.B.* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979), there is no clear Congressional mandate for the IRS to impose its policies upon religious schools. Under 26 U.S.C. §501(c)(3), the fact that an organization is operated exclusively for *religious* or *educational* purposes is all that is required for tax exemption. The IRS's own regulations provide that any *one* exempt purpose will suffice. Treas. Reg. §1.501(c)(3)-1(d)(1)(iii)(1959). The Fourth Circuit's interpretation, that a *religious* organization (or an *educational* one) must *also* meet the definition of "charitable" and so comply with "public policy," simply flies in the face of all known rules of statutory construction.

Furthermore, by the enactment of the 1980 Treasury and Postal Service Appropriations Act (Pub. L. 96-74, 93 Stat. 559), the IRS was forbidden to spend any money under new regulations to implement these policies in private, religious or church schools. Not only has Congress refrained from ordering the IRS to enter this area, but it also has tied the purse strings to keep the IRS out.

III. The important issues here presented have been before this Court previously, but have not been decided.

This case raises important issues the Court has considered on other occasions, but never decided. In *Coit* v. *Green*, 404 U.S. 997 (1971), this Court affirmed *per curiam*, without opinion, the decision in *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C. 1971) to the effect that

a segregated *private* school might be denied tax exemption under 26 U.S.C. §501(c)(3). Nevertheless, no *religious* school was involved. When the case at bar was previously before this Court in *Bob Jones University* v. *Simon*, 416 U.S. 725 (1974), it was decided on procedural grounds without reaching the merits. Nevertheless, the Court referred to *Green* as involving a question which "has not received plenary review in this Court, and we do not reach that issue today." (416 U.S. 725 at 740). Since the plaintiffs in *Green* had sought to enjoin the IRS from granting tax exemption to private *non-religious* segregated schools, and since the IRS reversed its own position on appeal, this Court found that there was never any "truly adversary controversy" before the Court (416 U.S. 725, 740). *Green* therefore has little value as precedent for the case at bar.

More recently, in *Runyon* v. *McCrary*, 427 U.S. 160 (1976), this Court held that private *non-religious* schools could not exclude Negroes, but carefully limited the decision to avoid application to "private sectarian schools that practice racial exclusion on religious grounds" (427 U.S. 160, 167).

Here, we have a private sectarian school which does not practice racial exclusion but does, on religious grounds, impose social rules based upon racial distinctions. There is a clear record and findings of fact that the religious beliefs are sincerely held and believed to be based on a Biblical foundation. Although petitioner is not affiliated with any church, its religious beliefs so color all its activities that the trial court held it to be a religious organization in and of itself, and its own religious order. 468 F. Supp. 890 at 894-895.

It would be difficult to find another case that offers a better opportunity to resolve these fundamental questions that have so far evaded authoritative review.

CONCLUSION

For the reasons stated above, *amicus* respectfuly urges this Court to grant a Writ of Certiorari to review the Judgment and Opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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550 Broad Street
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Attorney for Amicus Curiae

Amicus Brief

2

Office-Supreme Court, U.S.
FILED
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CLERK

No. 81-3

In the Supreme Court of the United States

October Term, 1981

BOB JONES UNIVERSITY,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FOURTH CIRCUIT

BRIEF OF CHURCH OF GOD, A/K/A WORLDWIDE CHURCH OF GOD

AMBASSADOR COLLEGE

AS AMICI CURIAE IN SUPPORT OF GRANTING CERTIORARI

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No. 81-3

In the Supreme Court of the United States

October Term, 1981

BOB JONES UNIVERSITY,
Petitioners,

VS.

THE UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS,
FOURTH CIRCUIT

BRIEF OF
CHURCH OF GOD, A/K/A WORLDWIDE CHURCH OF GOD

AMBASSADOR COLLEGE

AS AMICI CURIAE
IN SUPPORT OF GRANTING CERTIORARI

INTRODUCTION

This brief is being filed in support of the petition of Bob Jones University for a Writ of Certiorari in the above numbered case.

CONSENT OF THE PARTIES

The parties have granted their consent to the amici curiae for the filing of this brief.

INTERESTS OF THE AMICI CURIAE

Amici Curiae organizations are a church and a theological college and as such, are particularly qualified to represent to the court a detached and authoritative viewpoint.

The Church of God (a/k/a The Worldwide Church of God, an unincorporated association) consists of an established church with approximately 700 local church congregations, 975 ordained ministers, and a membership constituency of approximately 70,000 adult, baptized, church-attending members. There are in addition approximately 33,000 nonbaptized members in the United States only who support the church financially.

Ambassador College consists of an established theological college with two campuses with a total student body of approximately 700 students, which are purposely kept to a minimum so as to enhance the student-teacher ratio. The college trains the ministry for the church.

These amici curiae are not parties to the subject action, nor have they been involved in any of the activity alleged to form the basis for the action giving rise to the petition herein.

SUMMARY OF ARGUMENT

The direct issue tendered in this case is "discrimination", racial in nature. But the clear principle of rule of law to be derived will be the power and authority of the govenment to transgress the religious rights of churches and theological schools for any discrimination—sex, sexual preference, national origin or religious.

So what is affected here is not just the rights of Bob Jones University and its student body but those of every church, religious body, and theological college in America.

Therefore, these amici strongly support the petition of Bob Jones University and urge this court to consider the amici's fundamental accompanying brief setting forth their reasons for that support. The amici will file a more comprehensive brief upon the granting of the petition by the Court and setting the same for oral argument.

ARGUMENT

I.

The IRS has adopted the theory that all nonprofit organizations are and must be "charitable" under the provisions of the Internal Revenue Code.

The court must be alert to the unanticipated adverse *consequences* that flow from the seemingly innocuous conclusion that all tax exempt organizations, including churches and theological schools are "charitable." A single example will suffice:

The Attorney General of California obtained the *ex parte* appointment of a receiver which confiscated all the real and personal property of a church, amounting to mil-

lions of dollars, and all of the church's documents and records. The receiver assumed full management and control of all of the church's "fiscal affairs." The Attorney General justified the appointment on the theory that the church was "charitable." Being charitable, under a legal fiction, the church held all of its property and records in trust for the public. Holding all of its property in charitable trust for the public, all such property and documents belong to the public as the beneficiary of the trust.

Therefore, it was argued that the church had no right to complain as to the First, Fourth and Fourteenth Amendments of the U.S. Constitution being violated as all such property and documents belonged to the public and the Attorney General represented the public.

If all such organizations are "charitable," then the Attorney General, like the king of England (whose historical authority of charitable trusts was cited as a precedent) can, in effect, commit no constitutional wrong in his dealing with tax exempt organizations, including churches and theological colleges.

II.

The historical concept and meaning of the Ninth Amendment of the U.S. Constitution will, in effect, be repealed by administrative fiat as governmental agencies can engender or define public policy which, in effect, abrogates clear-cut fundamental constitutional rights. Such a role would usurp the sovereignty of the citizenry and the states by the federal governmental agency arrogating such authority and power onto themselves.

Such an arrogation of power by a governmental agency not only transgresses the religious clauses of the Constitution but the constitutional black letter law and penumbra rights of freedom of association, of speech and the right

to teach and to learn implicit in the due process clause of the Fifth Amendment. These additional fundamental rights would be torn from the individual citizens and the states.

III.

The impact of this case is not limited to "racial discrimination." The legal principle to be derived will be the alleged reference of "discrimination."

The discrimination that will lead to the forfeiture of churches' and theological schools' tax exemption will pertain to sexual discrimination (religious conviction against ordaining women ministers); sexual preference discrimination (refusing to baptize homosexuals); national origin discrimination (refusal of ethnic churches to admit members of another ethnic origin) and then religious discrimination (refusal to hire ministers or members of other faiths or of no faith; refusal to hire theological teachers of another faith or no faith; refusal to admit members of another faith into certain areas of the church or temple).

IV.

The IRS's contention that Bob Jones' religious practice violates public policy justifying the forfeiture of their tax exempt status is truly a case of first impression.

The appellate court attributed the Constitution and tax exemption as the basis for justifying the public policy giving rise to the forfeiture of Bob Jones' tax exemption.

There is not even a hint of a suggestion that the conduct of Bob Jones University constitutes state action. Therefore, how can their private individual conduct not constituting state action constitute an actionable transgression of the federal Constitution?

The Court's attempt to hang their finding of public policy on the argument that tax exemption constitutes a "subsidy" toward racial discrimination directly and absolutely conflicts with this Court's clear-cut pronouncement in *Walz v. Tax Commission*, 397 U.S. 664 (1970).

There is no hint of a suggestion that the conduct of Bob Jones University constitutes a crime. Therefore, IRS's grasping at "public policy" cannot give rise to the degree of a "compelling state interest" which is necessary to justify the infringement of a citizen's constitutional rights by the government. This point becomes embarrassingly vivid to the government when we consider that the principal case relied on by the appellate court explicitly stated that the conduct in that case constituted crime and not a mere civil wrong (See *Tank Truck Rentals v. Commissioner*, 356 U.S. 30 (1958)).

It is a fundamental principle that one source of true public policy is to be found in the statutes *Twin City Company v. Harding Glass Company*, 283 U.S. 353 (1931). Therefore, when we look to Title VII, which is the federal Civil Rights Act of 1964, we find that theological schools and religious organizations are exempted from accusations of religious discrimination (42 U.S.C., §§2000e-1 and 2000e-2(e)).

Further, under Title IX, the act prohibiting discrimination based on sex in federal aid to education, religiously associated educational instructions are exempted (20 U.S.C., §1681(a)(3) and 45 C.F.R., §86.12).

V.

It is imperative to our individual and state rights that neither religious freedoms nor religious convictions hinge upon political prejudice that finds its expression in the whimsical caprice of "public policy." In *Patton*

v. U.S., 281 U.S. 276, 306, 50 S.Ct. 253, 261, 74 L.Ed. 854, 70 ALR 263 (1929), we read, "The truth is that the quality, and, unless deducible in the given circumstances from constitutional or statutory provisions, should be accepted as the basis of judicial determination, if at all, only with the utmost circumspection. The public policy of one generation may not, under changed conditions, be the public policy of another."

CONCLUSION

For the reasons set forth herein the Petition for Certiorari in the present case should be granted and the judgment of the Fourth Circuit Court of Appeals be reversed.

July, 1981

Respectfully submitted,

RALPH K. HELGE
Attorney for Amici Curiae

Amicus Brief

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Office-Supreme Court, U.S.
FILED
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No. 81-3

IN THE

Supreme Court of the United States

October Term, 1980

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari From the United States Court of Appeals for the Fourth Circuit

BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI ON BEHALF OF CHURCH OF GOD IN CHRIST, MENNONITE

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INTEREST AND ARGUMENT OF THE AMICUS CURIAE

The *amicus curiae* has preferred to make its position known to this Honorable Court in its own words. Counsel, in filing this brief, therefore presents verbatim the following statement of the *amicus*, the Church of God in Christ, Mennonite. This describes the interest of the *amicus* and also its argument as friend of the Court. Since it states these more directly than counsel can, it is hoped, and respectfully submitted that, this should be deemed compliance with Supreme Court Rule 36:

"The Church of God in Christ, Mennonite, is a body of Christian believers, identified as a denomination of Mennonites with approximately seven thousand seven hundred members in the United States, who live in about 65 congregations in 21 states. Headquarters are in Moundridge, Kansas. Many of our present day members are descendants of Anabaptist people who in the past lived in various European countries. There is in our consciousness a strong sense of an often torturous history, in which our predecessors passed through periods of extreme h dship and suffering, a history that includes the records of many martyrs who suffered for those tenets that still constitute our confession of faith.[1] A notable feature of our church

1. During the 16th century, 2,500 Mennonites were sentenced to death in the courts of law for religious reasons in the Netherlands and Belgium, and executed, of whom about a third were women. About 5,000 brethren were put to death in Switzerland and surrounding territories from 1525-1535. We would relate in this also to earlier evangelical groups, such as the Waldenses, who especially after the inquisition was instituted, suffered martyrdom on a terrifying scale, as they in general confessed the same religious principles as the later Mennonites, and whom we consider forerunners of the same.

history is that of a church in a migratory status, migrating from one place, or nation, to another in search of religious consideration or toleration, a defenseless people looking for a place to be.[2] This has left within us an extremely high regard for religious liberty. We consider the religious liberty that this nation concedes as possibly its greatest virtue. Any threat to this causes quick and deep concern with us.

"In the case of *Bob Jones University v. United States,* in the opinion of The United States Court of Appeals for the Fourth District, it appears that a tenet of religion has been considered unacceptable because of 'public policy', and tax exemption denied on that basis. This would indicate an erosion of religious liberty as a religious belief is being subordinated to 'public policy'. This is the cause for our concern.

"If a religious institution can be denied tax exemption on the basis indicated, because they believe interracial dating to be unscriptural, where would be the limits to such applications, or to what other conclusions can this be carried?

"In our religious practices we make no provision for dating whatsoever: we have many practices that are not according to popular concepts. What would keep IRS from deciding that that offends public policy and withdraw tax exemption? The fact that the specific objections

2. Already in the 16th century migration emerges as a response among Anabaptist Mennonites because of religious persecution. Often the moves took place between different places in Switzerland, Germany and the Netherlands. The first emigration of Mennonites to the United States was in 1683. There was a large migration of Mennonites to Russia from Prussia and Danzig beginning in 1788, this time because of intolerance toward conscientious objection to bear arms. In 1873 another large migration of these Mennonites was effected when about 18,000 of them left Russia for the U.S. and Canada.

indicated in the *Bob Jones v. United States* case are not applicable does not quiet our concern regarding the possible results or conclusions of this decision. What implications are there in it for a church such as ours? For in our understanding we are ever in opposition to the 'world'. The very message and nature of the gospel of Christ predetermine this.[3]

"The question of tax exemption is important, but what would limit this decision to tax exemption, and keep it from being applied to questions more important, for certainly there are considerations much more vital to us than tax exemption. The tremendous stress that we have faced and face when we find ourselves in conflict between the will of secular government and what we understand as the will of God constitutes one of the most difficult aspects of our religious experience.[4]

"Our faith and understanding of scripture enjoin respect and obedience to the secular governments under which we live. We recognize them as institutions established by God for order in society. For that reason alone, without the added distress of punitive action for failure to do so, we always exercise ourselves to be completely law abiding. Our religious beliefs, however, are very deeply held. When these beliefs collide with the demands of society, our highest allegiance must be toward God,

3. 'But we speak the wisdom of God in a mystery, even the hidden wisdom, which God ordained before the world unto our glory, which none of the princes of this world knew, for had they known it, they would not have crucified the Lord of glory' (I Cor. 2:7 & 8).

4. Our most difficult experience in this in recent times was in World War I, when young men of non-resistant faith were conscripted and sent to army camps without provision for their conscientious objection. A number faced court martial and received prison sentences.

and we must say with men of God of the past, 'We must obey God rather than men',[5] and these are the crisis from which we would be spared.

"It is in that concern that we address ourselves to this great court. We believe that God has blessed in a very special way, the noble consideration toward sincere religious convictions that this nation has extended. We suggest that this is possibly the greatest factor in its prosperity. We believe its prosperity in the future will have much relation to the continuation of these traditional considerations, and urge that it may be so.

"Our intense desire, or continual prayer is that this nation may continue to enjoy the protection and blessing of Almighty God, that it may ever be a safe place where people such as we may have a place to life and search out the will of God for us in tranquility."

---

5. Acts 5:29.

CONCLUSION

For all of the foregoing reasons, the Church of God in Christ, Mennonite respectfully urges this Court to grant the Petition for Writ of Certiorari brought by Petitioner Bob Jones University.

DATED: JULY 30, 1981

Respectfully submitted,

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JUL 30 1981

No. 81-3

In the Supreme Court of the United States

October Term, 1981

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR
A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS FOR LEAVE TO FILE A MEMORANDUM AS AMICUS CURIAE AND MEMORANDUM OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AS AMICUS CURIAE

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No. 81-3

In the Supreme Court of the United States

October Term, 1981

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR
A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS FOR LEAVE TO FILE A MEMORANDUM AS AMICUS CURIAE AND MEMORANDUM OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AS AMICUS CURIAE

Pursuant to Rule 36.1 of the Rules of this Court, The Church of Jesus Christ of Latter-day Saints submits this motion to file a memorandum as *amicus curiae*. Petitioner has requested and consented to the filing of this brief (Appendix A). Respondent has consented to the filing of this brief (Appendix B).

In this case a non-tax-funded pervasively religious institution which had been recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code holds a primary religious conviction that interracial dating and marriage are contrary to scripture. On the grounds that section 501(c)(3) allows tax-exempt status solely to organizations which are "charitable" in the common law sense, and that the institution's policy implementing said religious belief violates "public policy," the Internal Revenue Service revoked its recognition of the institution's tax-exempt status.

This raises questions of fundamental importance to all churches in the United States. Is the admitted public policy of the nation favoring freedom of religion as expressed in the first amendment to be limited by a public policy assuring, in the words of a divided United States Circuit Court, "that Americans will not be providing indirect support for any educational organization that discriminates on the basis of race"? This question goes to the heart of the very existence of religious organizations. It has to do with the power to tax as the power to destroy.

Did revocation of recognition of the institution's tax-exempt status violate rights of the institution protected by the free exercise clause of the first amendment?

Did the requirement of the Internal Revenue Service that, to be tax-exempt, a religious organization must stay in step with "expressed federal policy," as defined by the Internal Revenue Service, violate the establishment clause of the first amendment?

Shall the enumeration of exempt purposes in section 501(c)(3) of the Internal Revenue Code be accorded its clear and unambiguous meaning, or can it reasonably be construed to require that an organization, regardless of whether it is organized and operated exclusively for religious purposes, nonetheless be "charitable" in the common law sense?

We believe that this is a case of first impression so far as the Supreme Court is concerned. Dealing, as it does, with basic first amendment rights, The Church of Jesus Christ of Latter-day Saints believes that this Court will benefit from its views as well as views of other religions in this matter.

It is, therefore, respectfully submitted that this motion to file a memorandum as *amicus curiae* be granted.

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APPENDIX "A"

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July 20, 1981

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Re: Bob Jones University v. United States;
Supreme Court Docket No. 81-3

Dear Mr. McConkie:

As counsel for petitioner Bob Jones University in the above-captioned case, I hereby consent to the filing of a brief *amicus curiae* on behalf of Church of Jesus Christ of the Latter-Day Saints.

Very truly yours,

/s/ William B. Ball

William B. Ball

WBB:dh

APPENDIX "B"

EMBLEM

U.S. Department Of Justice
Office Of The Solicitor General

Washington, D.C. 20530
July 13, 1981

Oscar W. McConkie, Esquire
Kirton, McConkie & Bushnell
330 South Third East
Salt Lake City, Utah 84111

RE: *Bob Jones University* (Petitioner) v. *United States of America* (Respondent — No. 81-3

Dear Mr. McConkie:

I hereby consent to your filing an *Amicus Curiae* in this case on behalf of The Church of Jesus Christ of Latter-day Saints.

Yours sincerely,

/s/ Lawrence G. Wallace

Lawrence G. Wallace
Acting Solicitor General

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No. 81-3

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FOR THE FOURTH CIRCUIT

MEMORANDUM OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS AS AMICUS CURIAE

INTEREST OF AMICUS CURIAE

The Church of Jesus Christ of Latter-day Saints is a church with worldwide membership of approximately five million persons. There are 2,780,000 members in the United States, constituting 7,500 congregations. It operates the largest church sponsored university in the nation, Brigham Young University, with over 26,000 students. In addition, it owns and operates Institutes

of Religion and Seminaries enrolling approximately 198,109 students in the United States. It is accorded a tax exempt status under the Internal Revenue Code, section 501(c)(3).

The Church believes in the separation of church and state. "We believe that religion is instituted of God; and that men are amenable to him, and to him only, for the exercise of it, unless their religious opinions prompt them to infringe upon the rights and liberties of others; but we do not believe that human law has the right to interfere in prescribing rules of worship to bind the consciences of men, nor dictate forms for public or private devotion . . . ." *Doctrine and Covenants*, § 134:4. "The Church has no civil or political functions of the state, so the state may not assume the functions of the Church." Message of the First Presidency, April Conference (1942).

We agree with Fourth Circuit Judge Widener as he dissented in this case saying: "For it is the very existence of the religious organization at stake here, the power to tax involving the power to destroy." And, "we are dealing in this case not with the right of the government to interfere in the internal affairs of a school operated by a church, but with the internal affairs of a church itself. There is no difference in this case between the government's right to take away Bob Jones' tax exemption and the right to take away the exemption of a church . . . although that church may not operate a school at all." *Bob Jones University v. United States*, 639 F.2d 147, 156 (4th Cir. 1980) (Widener, J., dissenting).

The Church expresses no viewpoint on the stated policies of the Bob Jones University. The question is not, of course, whether we like or dislike the university's policy; the question is whether the Internal Revenue Service public servants shall have power to grant or deny the lifeline of tax exemption based on what they choose to call "public policy" irrespective of authorization by the Congress.

It does appear that the religious mission of churches could be imperiled if the view of the Internal Revenue Service and the majority opinion of the Fourth Circuit Court were allowed to stand. The broad rule that religious liberty may be curtailed in this circumstance is one frought with dire consequences to all religious groups.

We are advised that this is a case of first impression so far as the Supreme Court is concerned, as well as the Courts of Appeals, and therefore, respectfully urge the Honorable Supreme Court of the United States to determine the matter.

SUMMARY OF ARGUMENT

I. The United States Court of Appeals for the Fourth Circuit has decided an important question of federal law which has not been, but should be, settled by this Court. It misconstrued section 501 (c) (3) of the Internal Revenue Code by not according the words thereof their plain and simple meaning. In so rendering the statute it allows the Internal Revenue Service to interpret the "public policy" against racial discrimination

to override and limit the establishment and free exercise clauses of the first amendment of the United States Constitution.

II. The United States Court of Appeals for the Fourth Circuit has decided a federal question in a way in conflict with applicable decisions of this Court. The lower court has allowed the Internal Revenue Service, by use of the mechanism of taxation of those churches which hold and practice beliefs disfavored by it, to prescribe what is acceptable doctrine for churches. This is in contravention of the free exercise and establishment of religion clauses of the first amendment of the United States Constitution and this Court's interpretation thereof.

ARGUMENTS FOR GRANTING THE WRIT

I. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

The dissenting opinion correctly states, "This is a case of first impression so far as the Supreme Court is concerned . . . ." *Bob Jones University v. United States*, 639 F.2d 147, 158 (4th Cir. 1980) (Widener, J., dissenting).

The question of federal law concerned is of national and fundamental importance. All religious institutions in the country are potentially threatened by the

rule of law proposed by the Fourth Circuit which would have the benefit of their tax exemption removed because of their failure to conform to court mandated "public policy." The District Court finding that petitioner's "primary purpose is religious and that it exists as a religious organization" which "also serves educational purposes" appears to be uncontested and accepted. Thus the observations of the dissenting judge seem appropriate and correct. "[W]e are dealing in this case not with the right of the government to interfere in the internal affairs of a school operated by a church, but with the internal affairs of the church itself." *Id.* at 156.

The tax exemption of every organization in the United States organized exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster international amateur sports competition, or for the prevention of cruelty to children or animals depends upon section 501(c)(3) of the Internal Revenue Code for its tax exemption. The United States Court of Appeals for the Fourth Circuit has misconstrued this act of Congress saying that each such organization must meet the common law definition of "charitable" notwithstanding the fact that the category "charitable" is listed separately in section 501(c)(3).

This Court has said that the words of a statute should be interpreted in their ordinary, everyday sense. *Malat v. Riddell*, 383 U.S. 569, 571 (1966). The code does not say what the lower court says it says.

Where substantial constitutional issues under the establishment and freedom of religion clauses of the first amendment arise by extending federal statutory requirements to religious institutions such can only be done by the "clearly and affirmatively expressed" statements of the Congress. It cannot be left to implication. *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 501 (1979).

There was no reason for the lower court to test the exemption for education purposes of Internal Revenue Code section 501(c)(3) because that section expressly granted Bob Jones University its exemption for "religious" purposes. An exemption for religious purposes has the protection of the first amendment. The Supreme Court has said that an exemption for religious purposes not only has such protection but also has the authorization of the first amendment. *Walz v. Tax Commission*, 397 U.S. 664 (1970).

> "The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state . . . . There is no genuine nexus between tax exemption and establishment of religion.
>
> . . . For so long as federal income taxes have had any potential impact on churches — over 75 years — religious organizations have been expressly exempt from the tax. Such treatment is an 'aid' to churches no more no less in principal than the real estate tax exemption of the states. Few concepts are more deeply embedded in the fabric of our national life, beginning in the pre-Revolutionary colonial times, than for the government to ex-

> ercise at the very least this kind of benevolent neutrality toward churches and religious exercises generally so long as none was favored over others and none suffered interference.
>
> It is significant that Congress, from the earliest days, has viewed the Religion Clauses of the Constitution as authorizing statutory real estate tax exemption to religious bodies . . . ." *Id.* at 705-13.

The majority of the Fourth Circuit Court struck at the heart of what Justice Brennan saw as one of "two basic secular purposes for granting . . . property exemption to religious organizations" in his concurring opinion in *Walz* when it ruled that its views of "racial discrimination" override the right to live by clearly established religious principle. Justice Brennan wrote:

> "Second, government grants exemptions to religious organizations because they uniquely contribute to the pluralism of American society by their religious activities.
>
> Government may properly include religious institutions among the variety of private, non-profit groups that receive tax exemptions, for each group contributes to the diversity of association, view point, and enterprise essential to a vigorous, pluralistic society." *Id.* at 713.

When Judge Hall, sitting by designation on the Circuit Court, demands "that government must 'steer clear' of affording . . . tax support to . . . institutions that practice racial discrimination" he evidences a markedly more restrictive law of religious pluralism than seems to have heretofore been advocated by this Court in *Walz*.

This Court has never held, as the lower court here holds, that the "public policy" of "eliminating all forms of racial discrimination in education" overrides and limits the exercise of religious liberty.

This important issue should be settled by this Court.

II. THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The lower court gives lip service to the benevolent neutrality doctrine of this Court. *Gillette v. United States*, 401 U.S. 437 (1971); *Walz v. Tax Commission*, 397 U.S. 664 (1970). "We agree that the Government must maintain an attitude of neutrality toward all religions." *Bob Jones University, supra* at 154. And then effectively refuses to apply the principle to Bob Jones University, citing as its justification an early anti-Mormon case upholding statutes prohibiting bigamy. *Reynolds v. United States*, 98 U.S. 244 (1878).

This Court has found a compelling governmental interest to justify a denial of religious liberty in very few cases. *Reynolds v. United States*, 98 U.S. 244 (1878); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905); *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158 (1944). None of these precedents apply to the instant case.

1. *Reynolds*

This Court has come a long way since gratuitously equating the polygamous marriages of the Old Testament and Mormon patriarchs with "human sacrifices" and "a wife . . . to burn herself upon the funeral pile of her dead husband." *Reynolds supra* at 166. We are not here contending that it has gone as far as former Justice Douglas suggested in his dissenting opinion in *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

> "The Court rightly rejects the notion that actions, even though religiously grounded, are always outside the protection of the Free Exercise Clause of the First Amendment. In so ruling, the Court departs from the teaching of *Reynolds v. United States*, 98 U.S. 145, 164, 25 L.Ed 244, 250, where it was said concerning the reach of the Free Exercise Clause of the First Amendment, 'Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.' In that case it was conceded that Polygamy was a part of the religion of the Mormons. Yet the Court said, 'it matters not that this belief (in polygamy) was a part of his professed religion: it was still belief and belief only.' *Id.* at 167, 25 L.Ed. at 250.
>
> Action, which the Court deemed to be antisocial, could be punished even though it was grounded on deeply held and sincere religious convictions. What we do today, at least in this respect, opens the way to give organized religion a broader base than it has ever enjoyed; and it even promises that in time *Reynolds* will be overruled." *Id.* at 247.

In *Yoder* this Court sustained members of the Amish faith in their first amendment right to free exercise of religion in their refusal to obey Wisconsin's compulsory school attendance law.

We are saying that the lower court's opinion that racial concepts and actions contrary to "public policy" override one's right to live by religious principle would render meaningless this Court's pronounced tests for free exercise violation in *Yoder*. *See also Sherbert v. Verner*, 374 U.S. 398, 406 (1963).

In addition *Reynolds* is not applicable as a precedent in this case because it is not contended that Bob Jones University committed a felony.

2. *Jacobson*

A state legislature may enact a statute purporting to be for the protection of a community against the spread of small pox. An adult cannot claim to have been deprived of liberty secured by the fourteenth amendment because of a compulsory vaccination law.

This was a fourteenth amendment case and has nothing to do with the case at bar.

3. *Prince*

In *Prince*, the Court considered the right of a state to regulate family life to the extent that it protects the welfare of children. The Court upheld a fine of the custodian of a child 9 years of age for violating the child labor laws of Massachusetts in that she permitted the child to work in offering for sale publications of

Jehovah's Witnesses, the selling of which was a part of the doctrine of the church.

The states' right to protect children is simply not an issue in this case.

ESTABLISHMENT AND FREE EXERCISE OF RELIGION

The Pharisees, during the ministry of Jesus Christ, attempted to entangle him in the tenuous church-state relationship. His reply was: "Render therefore unto Caesar the things that are Caesar's; and unto God the things that are God's." Matthew 22:21.

The lower court, speaking for Caesar, asks too much.

This Honorable Court has more faithfully construed our federal papers, which were, in pertinent part, interpreted by President Jefferson in his second inaugural address in these words:

> "In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers of the general government." 1 Messages and Papers of the Presidents 367 (Richardson ed. 1897)

The lower court allows the government, by use of the mechanism of taxation of those churches which hold and practice beliefs disfavored by it, to prescribe what is acceptable doctrine for churches.

This is in direct conflict with decisions of the Supreme Court:

1. Religious liberty is a "preferred" freedom and its exercise a "transcendent value". *Murdock v. Pennsylvania*, 319 U.S. 105, 115 (1943); *Norwood v. Harrison*, 413 U.S. 455, 469 (1973);

2. Government shall not give preference to one religion over another. *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963);

3. Government must be neutral in matters of religious theory, doctrine and practices. *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968);

4. Law cannot excessively entangle government with religion nor can its primary effect be to either advance nor inhibit religion. *Lemon v. Kurtzman*, 403 U.S. 602 (1971);

5. The state should respect the religious nature of its people and accommodate the public service to meet the people's spiritual needs. *Zorach v. Clauson*, 343 U.S. 306 (1952);

6. There is no general power of the state to standardize its children by forcing them out of private religious schools. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925);

7. The government shall not be "hostile to any religion." *Epperson v. Arkansas*, 393 U.S. 97, 103-04 (1968);

8. Governmental action should not pressure religious bodies to conform their organization or policy to governmental prescriptions. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 706 (1976);

9. This Court has condemned "compulsory unification of opinion." *West Virginia State Board of Education v. Barnett*, 319 U.S. 624, 641 (1943);

10. And, finally, (this is not intended to be a full or complete listing) this Court has, Jefferson-like, upheld the right to maintain religious beliefs despised by others. *United States v. Ballard*, 322 U.S. 78, 87 (1944).

CONCLUSION

For all of the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit in this matter.

Respectfully submitted,

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IN THE

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BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF *AMICUS CURIAE*

This brief is submitted on behalf of General Conference Mennonite Church.

The General Conference Mennonite Church is a denomination composed of approximately 325 Mennonite congregations and 60,000 individual members and is one of the Historic Peace Churches along with other Mennonite and Friends groups. The General Conference Mennonite Church exists primarily to give expression of the individual congregations' mission and outreach goals. As such it is active throughout the world in missionary and relief efforts, primarily in the Third World.

The General Conference Mennonite Church is a member of the Mennonite World Conference, a confederation of most Mennonite groups throughout the world, which has a total membership of over 600,000 persons. The Mennonite World Conference constituency is less than 50% Caucasian.

The General Conference Mennonite Church has historically been active in its support for victims of oppression and bigotry whether the oppression is motivated by class, racial, or religious beliefs. General Conference Mennonite Church members are currently active as volunteers working in inner city situations where racial discrimination is a major impediment to the persons being helped.

A statement, "The Christian and Race Relations", adopted by the General Conference Mennonite Church in 1959 clearly opposes racial discrimination of any kind. The Conference does not agree with Bob Jones University's interpretation of Scripture on race nor does it agree with the policy of forbidding inter-racial dating. The General

Conference admonishes the faculty, staff and students to reconsider their stand on racial issues and dialogue with the larger Christian community regarding those beliefs.

The General Conference Mennonite Church submits this brief in the belief that they may serve this Honorable Court in its determination of this case by bringing to the attention of the court questions which they believe are involved herein, each of which poses an important issue relating to the personal liberties of citizens of the United States and issues which override the disagreement which General Conference Mennonite Church has with the racial policies of Bob Jones University.

ARGUMENT

I

Withdrawal By the Internal Revenue Service of IRC Section 501(c)(3) Status on the Basis of Failure to Conform to "Public Policy" Threatens all Religious Institutions.

"Public policy" is not defined in the law, and as such is subject to arbitrary definition by the Internal Revenue Service. The General Conference Mennonite Church as one of the Historic Peace Churches knows full well the mischief which can be done to a religious institution by well-meaning public servants who believe that a particular group violates "public policy".

"Public policy" has been used against Mennonites since their predecessors came into existence in 1525 as a means of eradicating non-conforming viewpoints. Mennonites are religious pacifists who refuse to bear arms or to be in any way involved in the killing of other human beings no matter how righteous their government believes the cause to be. Because of their beliefs they have been hounded from their homes, tortured and murdered for centuries. Mennonites have been imprisoned in this country in every war since the Revolutionary War for refusal to bear arms.

In this enlightened day and age a religious organization can be more easily destroyed by taxation than by burning at the stake. While donors of tithes may not be affected by the loss of tax exempt status of an organization, large donors including foundations and estates are simply unable to afford donations which are not tax deductible. Any modern religious organization with a substantial relief and missionary program can only exist if the regular gifts of its members are also supplemented by these larger

gifts. Imposition of the normal corporation tax structure on any religious organization would quickly reduce its program to a shadow of its former self and prevent many of the worthwhile relief efforts which it undertakes.

The threat of revocation of IRC 501(c)(3) status is therefore enough to cause any religious organization to pause before performing acts which will displease the Internal Revnue Service and its guardians of "public policy". The General Conference Mennonite Church for its support of persons who resist induction into the armed forces alone could easily be seen by the IRS as violating "public policy", without even mentioning its efforts on behalf of the oppressed who are as often oppressed by their own government through thoughtless bureaucracy as by bigotry.

The General Conference Mennonite Church knows full well the cost by bringing an appeal all the way from the District Court to the Supreme Court, and the mere fact that arbitrary acts of the Internal Revenue Service can be reviewed in that manner does not make up for the fact that the money expended in that effort can result in a group's program in entire countries being closed down.

Your Amicus requests that the ability of the IRS to unilaterally withdraw IRC 501(c)(3) status on "public policy" grounds be severely limited and subject to automatic judicial review.

II

Religious Liberty Must Transcend Administrative Views of "Public Policy".

The learned Judge Widener laid out in some detail in his dissent to the majority Fourth Circuit opinion below the status of religion under the First Amendment. Your Amicus agrees that the status of religious liberty in this

country is and should be very high. This Court has refused repeatedly to meddle in religious affairs and has regularly rejected any entanglement of government in religion. The power to tax and to deny exemption from tax has become a tremendous power by which religious liberty may be snuffed out while a stance of neutrality towards religion is maintained. The case at bar involves a small religious group on the fringe of Christian beliefs as generally held by mainline denominations in this country. It is a perfect example of hard cases making bad law. The decision of the Fourth Circuit, however, has an effect upon all religious groups which your Amicus submits is an intolerable one. That effect is to simply allow an administrative bureaucracy to snuff out a religious group's program by withdrawing its tax exemption. Your Amicus suggests that a group meeting the requirement of IRC Section 501(c)(3) on its face is simply entitled to exemption and that the current popularity of the religious views or policies of the exempt organization should be irrelevant to the determination of exempt status.

The power to tax is the power to destroy when modern religious administrative structures are involved. In the case of the General Conference Mennonite Church the sudden diminution in receipts which would be occasioned by a loss of exempt status would bring many programs to a screeching halt and would require the immediate recall of missionaries and service workers from all over the world. Your Amicus would submit that that sort of effect can hardly be described as neutrality towards religion.

CONCLUSION

For all of the foregoing reasons your Amicus believes a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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IN THE

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UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

Brief of
NATIONAL ASSOCIATION OF EVANGELICALS
As Amicus Curiae
in Support of Granting Certiorari.

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Brief of NATIONAL ASSOCIATION of EVANGELICALS as Amicus Curiae in Support of Granting Certiorari

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The National Association of Evangelicals, with the consent of the parties, submits this brief as amicus curiae in support of Petitioners. The parties have consented to the filing of this brief and their letters of consent have been filed with the clerk pursuant to Rule 36.

INTEREST OF AMICUS CURIAE

The National Association of Evangelicals ("NAE") is a nonprofit religious corporation exempt under §501(c)(3) of the Internal Revenue Code. NAE is an association of state and local evangelical organizations, colleges, and universities and some 36,000 churches from 74 denominations. The immediate constituency of NAE is about 3.5 million people; through its affiliates NAE has a service constituency in excess of 10 million persons worldwide. These affiliates include the National Religious Broadcasters, the World Relief Corporation, and the Evangelical Foreign Mission Association.[1]

NAE is dedicated to strengthening the ministry of the local church, including religion-based schools. While evangelicals can and do differ with one another in the interpretation of Scripture, what unites them is their affirmation of the truth and inspiration of the Bible, as well

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1 Because of its separatist character and strict theological views, Bob Jones University would consider the limited doctrinal tenets of NAE too "liberal." Thus the University is not a member or affiliate of NAE.

as the Lordship and Deity of Jesus Christ.[2]

What has prompted our submission of this brief is the ominous threat to religious freedom posed by the decision of the court below. No case has gone to such extremes in applying the public policy against invidious racial discrimination. Until this case that public policy had been applied only in situations of invidious discrimination, that is, when at least some element of personal bias or prejudice was present. Since May 29, 1975, Bob Jones University has admitted black and white students on an equal basis.[3] And it has enforced its religious convictions with respect to interracial dating and marriage with an even hand.

The court below has ignored crucial factual differences in the cases it relies

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2 Most evangelicals would not agree with the view of Bob Jones University that interracial dating and marriage is contrary to Scripture.

3 From January 1 to May 29, 1975, the University barred unmarried blacks from enrollment (unless the applicant for admission had been a University staff member for at least four years). This policy of virtual exclusion of blacks was followed as the safest, easiest, and most reliable way to protect its religious conviction against interracial dating and marriage.

upon, such as the total exclusion of blacks from educational institutions. In so doing, it erroneously applies a public policy intended to rid our country of invidious racial discrimination to a University which admits blacks, but follows a policy with respect to interracial dating and marriage based not on personal bias or prejudice, but sincere religious belief.[4]

The basis for our concern is reflected in the dissenting opinion of Judge Widener, in which he states (639 F.2d at 156): "Accepting the foregoing findings of the district court as correct, and even the majority does not claim they are clearly erroneous, and the previous findings of this court and the Supreme Court, as we must, that Bob Jones University is a religious organization, we are dealing in this

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4 NAE is familiar with the University and its strict theological views, including its religiously based nonmiscegenation belief. We would not submit this brief on behalf of the University if we had reason to believe that its professed religious beliefs were being used to mask invidious racial discrimination. In its 1964 Resolutions, NAE addressed "the problem of race prejudice" and called "upon our churches to accelerate the desegregation of their own institutions both in spirit and in practice and the opening of the doors of all sanctuaries of worship to every person, regardless of race or national origin."

case not with the right of the government to interfere in the internal affairs of a school operated by a church, but with the internal affairs of the church itself. There is no difference in this case between the government's right to take away Bob Jones' tax exemption and the government's right to take away the tax exemption of a church which has a rule of its internal doctrine or discipline based on race, although that church may not operate a school at all."

We are also disturbed at the precedential potential of the lower court's decision with respect to the Government's use of other clearly defined public policies, such as the policy against sex discrimination, as the basis for withdrawing tax exemption. Discrimination against women on the basis of sincere religious belief exists in many churches in NAE's constituency.

STATEMENT OF THE CASE

Bob Jones University has sued the United States for a refund of $21 in FUTA taxes it paid for calendar year 1975. The Government has counterclaimed for approximat-

ely $490,000 in unemployment taxes, plus interest, which it asserts are due on returns filed by the University for the years 1971 through 1975.

At issue is revocation by the IRS of the University's exemption as an organization described in §501(c)(3) of the Internal Revenue Code. IRS contends that § 501(c)(3) only exempts organizations which are "charitable" in character; that whether the University is religious in purpose and character is irrelevant; that an organizations which violates the clearly defined public policy against racial discrimination cannot be considered "charitable"; and that the University's policy against interracial dating and marriage--though it concedes this policy is based on sincere religious belief--violated federal public policy.

The District Court found the University to be a religious organization and therefore the Government's declared procedure for denying tax exempt status to educational organizations engaging in racial discrimination was inapplicable to it. Moreover, the District Court held that the revocation of the University's tax exemption violated its rights under the Free

Exercise Clause.

The Court of appeals, Judge Widener dissenting, reversed. Its decision rests on four pillars:

1. The University is subject to IRS revenue rulings and procedures prohibiting racial discrimination in private schools because it is an educational institution as well as a religious one. 639 F.2d at 149.

2. That the University is not a "charitable" organization because, in the University's enforcement of its rules relating to interracial dating and marriage, it violated "the government policy against subsidizing racial discrimination in education, public or private." Id. at 151.

3. That, assuming the revocation of the University's tax exemption did impinge upon its Free Exercise rights, the government's interest in eliminating all forms of racial discrimination in education is compelling. Thus its action did not violate rights of the University under the Free Exercise Clause. Id. at 153.

4. That the principle of Government neutrality toward religion embodied in the Establishment Clause does not prevent government action based upon the compelling

state interest in the enforcement of the public policy against racial discrimination. And it found that since the only inquiry which government would make of the University would be whether the institution maintains racially neutral policies, no excessive entanglements would be created. Id. at 154-155.

QUESTION PRESENTED

This brief is addressed to the important question whether the public policy against invidious racial discrimination, weighed in the balance with the Free Exercise Clause, constitutes a "compelling state interest" sufficient to justify revoking the tax exemption of a pervasively religious organization which does not discriminate between the races except on the basis of its sincere religious belief that interracial dating and marriage is contrary to Scripture.

SUMMARY OF ARGUMENT

The balancing process employed by the court below in weighing public policy with respect to invidious racial discrimina-

tion against the Free Exercise rights of the University presents a startling and unprecedented departure from the teaching of this Court in such cases as Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963); and Thomas v. Review Board, 49 U.S.L.W. 4341 (April 6, 1981). The rationale of the court below is one dimensional--it so elevates the doctrine of "compelling state interest" that the Free Exercise Clause is totally eclipsed.

The Court of Appeals professes to recognize the fact that the religious belief of the University is sincere and its racial policy immutable. 639 F.2d at 148. Yet, notwithstanding the University's open admissions policy and the absence on the record of any invidious discrimination against black students, the court below finds a pressing need to fashion a "prophylactic rule" to prevent indirect support by Americans of an exempt organization that believes Scripture forbids interracial dating and marriage. The "balance" the lower court has struck in this case inevitably leads to speculation that the court was unconvinced, its rhetoric notwithstanding, of the sincerity of the rel-

igious belief. Perhaps the University's view of Scripture seemed far-fetched to the court below. But as this Court stated in United States v. Ballard, 322 U.S. 78, 87 (1944), the First Amendment protects adherence to religious views that "might seem incredible, if not preposterous, to most people."

The prophylactic rule of the court below appears virtually absolute, judging from the court's application of that rule to the unique facts of this case. Under that rule, it is apparently irrelevant whether racial discrimination proceeds from the worst of motives or the best of intentions; whether from personal bias and rank prejudice or from a devout desire to obey the will of God.

Surely in a free society whose basic charter nourishes religious pluralism the public policy against invidious racial discrimination leaves room for the University's exercise of a belief that interracial dating and marriage contravenes Scripture. In short, there is no need here, "for the protection of society," Cantwell v. Connecticut, 310 U.S. 296, 304 (1940), to sustain the absolutist prophylactic rule announced by the Court of

Appeals.

The court below also erred in its expansive interpretation of Tank Truck Rentals v. Commissioner, 356 U.S. 30 (1958). That case involved public policy as the basis for denying specific expenses directly attributable to illegal acts; it did not concern public policy as the basis for denying the complete exemption of an organization due to a particular practice based upon sincerely held religious beliefs. Moreover, the Court of Appeals broadened the application of the Tank Truck doctrine without mentioning this Court's decision in Commissioner v. Tellier, 383 U.S. 687, 693-694 (1966), which indicated that, if anything, the Tank Truck doctrine was to be confined rather than expanded.

ARGUMENT

I.

THE COURT BELOW HAS DEPARTED FROM THIS COURT'S TEACHING IN FREE EXERCISE CASES

In upholding revocation of Bob Jones University's tax exemption, the court below forces the University to choose between its right under the Free Exercise Clause and the receipt of a government benefit other-

wise available. (We perceive no difference of constitutional dimensions between government benefits in the form of tax exemption or welfare payments).

In Thomas v. Review Board, 49 U.S.L.W. 4341, 4344 (April 6, 1981) this Court once again affirmed a principle of long standing--"that a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program." (Actually, the University cannot abandon the practice of its immutable religious belief, though the court below suggests that course, without being hypocritical.) We recognize that the lower court did not have the benefit of this Court's thinking in that case, but the long established principle expounded in Thomas had been thoroughly discussed in Sherbert v. Verner, 374 U.S. 398 (1963).

In Sherbert this Court stressed that "appellant's declared ineligibility for benefits derives solely from the practices of her religion, but the pressure upon her to forego that practice is unmistakable." Id., at 404. This Court reiterated the same principle when in Thomas v. Review Board it stated: "Where the state conditions re-

ceipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial." 49 U.S.L.W. at 4344.

In revoking the tax exemption of the University, the Government has put substantial pressure on the University to modify its behavior and to violate its beliefs. The question thus narrows to whether the Government can "justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest." Ibid. As this Court observed in Thomas, quoting from Wisconsin v. Yoder, "'[t]he essence of all that has been said and written on the subject is that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.'" Ibid.

That the University's beliefs with respect to interracial dating and marriage are a matter of sincere religious convic-

tion is an undisputed fact on the record. It is thus beyond question that Bob Jones asserts a legitimate claim under the Free Exercise Clause. Hence the ultimate question becomes whether the public policy against invidious racial discrimination justifies revocation of the University's tax exemption.

The Court below has equated the University's sincere religious belief that Scripture forbids miscegenation with invidious racial discrimination. That is evident from the many cases relied upon by the court below which involve situations where blacks were excluded from admission to educational institutions or otherwise the victims of racial prejudice. In support of its indiscriminate concept of racial discrimination, the Court of Appeals relies upon such Equal Protection cases as Loving v. Virginia, 388 U.S. 1 (1967) (law prohibiting interracial marriage unconstitutional) and McLaughlin v. Florida, 379 U.S. 184 (1964) (interracial cohabitation law invalid). Such laws from a bygone white supremacy era were obviously prompted by blatant racial prejudice. We fail to see their relevance where a University's disciplinary rule is based upon sincerely held

religious beliefs.

In Runyon v. McCrary, 427 U.S. 160 (1976), this Court held that 42 U.S.C. §1981 prevents private schools from discriminating racially among applicants. This Court carefully observed in footnote 6 of its opinion that Runyon did not concern a private school which excluded applicants on religious grounds, and that the Free Exercise Clause was thus in no way involved. Here it is, for while Bob Jones University does not exclude blacks, it follows a religiously based policy which the court below treats as invidious racial discrimination.

Judge Widener states in his dissenting opinion: "This is a case of first impression so far as the Supreme Court is concerned, as well as the Courts of Appeals." 639 F.2d at 158. As just discussed, it was not addressed in Runyon v. McCrary. To the extent that Congress has considered the question, as Judge Widener pointedly observes, it has raised grave doubts about the validity of the public policy rationale of the court below. 639 F.2d at 160-161. Only this Court can remove those doubts.

ARGUMENT

II.

THE TANK TRUCK RENTALS DOCTRINE IS INAPPLICABLE TO THIS CASE

When a school excludes blacks for racial reasons or otherwise discriminates against black students, that racial discrimination is rightly characterized as invidious and pervasive. We assume, for the sake of argument, that in such cases the doctrine of Tank Truck Rentals v. Commissioner, 356 U.S. 30 (1958), could arguably be applied on an equally pervasive basis to revoke the exemption of the offending institution. But that is plainly not the case here. There is simply no authoritative source for applying the Tank Truck Rentals public policy doctrine as the basis for revoking the exemption of a religion-based school which admits black students on an equal footing with white students, and treats black and white students alike with respect to all its disciplinatory rules, including rules against interracial dating and marriage founded on sincere religious belief.

The guarded comments of this Court in Commissioner v. Tellier, 383 U.S. 687, 693-

694 (1966), indicating that the Tank Truck Rentals doctrine should be confined rather than expanded are ignored by the court below on the theory that Tank Truck involved a profit-making, computational situation. Therefore, as matters now stand, there are virtually no constraints on the IRS in its expansive application to the §501(c)(3) exempt organization area of Tank Truck Rentals.

The devasting financial impact of the Tank Truck Rentals doctrine as applied to the unique facts of the present case is only symptomatic of a greater problem. There is a pressing need for this Court to settle the question of the applicability of that amorphous doctrine in the §501(c)(3) exempt organizations area. Otherwise, we envision IRS branching out in additional public policy areas such as discrimination on the basis of sex, age, or physical handicap. What, in principle, is to prevent IRS from questioning the "charitable" character of offending exempt organizations in these other public policy areas. Any such developments should not be left to the discretion of the Commissioner of Internal Revenue, but to Congress.

CONCLUSION

For the foregoing reasons a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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Amicus Brief

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UNITED STATES OF AMERICA, - - Respondent

On Petition for a Writ of Certiorari from the United States Court of Appeals for the Fourth Circuit

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BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI ON BEHALF OF THE NATIONAL COMMITTEE FOR AMISH RELIGIOUS FREEDOM

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IN THE

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BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI ON BEHALF OF THE NATIONAL COMMITTEE FOR AMISH RELIGIOUS FREEDOM

INTEREST OF THE AMICUS CURIAE

The National Committee for Amish Religious Freedom is a nonprofit association founded in 1967 for the purpose of protecting the religious liberty of the Old Order Amish and similar "plain people" throughout the United States. The Committee is made up of professors, lawyers, clergymen, and citizens of many religious faiths, all non-Amish, who work to preserve the rights of the Amish to practice their traditional, religiously-based lifestyle. The National Committee is interested in this case, as *amicus curiae,* due to the serious issues of religious liberty which it presents.

The Amish people, found in nineteen states in America today, descend from the Swiss Anabaptists

of 1525 who had sought to return to a Golden Age of Christianity.[1] To be "First Century Christians" demanded nonconformity to all things worldly and therefore a lifestyle of austerity and a separated community of believers.[2] "The separated community" implied not only separation from the world but also the *separation of church and state* as a safeguard of religious liberty. It has been said of the Anabaptists:

> "They were the means of preserving what, in the nature of things, would seem to be the aim and the first justification of Luther, Calvin, and of all the other successful Reformers who were their deadliest foes: the principle . . . that men have the right to form their own religious groups, to join a group or not to join, to leave it when they choose; that these groups are equal in their rights and subject to no authority but what they themselves choose; that the groups are free to choose the way they shall worship; that every individual is free to choose what he shall believe. Whatever the theologians may need to say—or the philosophers—about the value of these principles, they have had a great history (thanks, first, to the Anabaptists) in the last three hundred years, nor is that history at an end." P. HUGHES, A POPULAR HISTORY OF THE REFORMATION, 142 (Image Books ed., (1960).

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[1]See generally, F. LITTELL, *Sectarian Protestantism and the Pursuit of Wisdom*, PUBLIC CONTROL OF NONPUBLIC SCHOOLS (Erickson ed.) 61-82 (1969).

[2]See J. HOSTETLER, AMISH SOCIETY, 77-79 (1980).

SUMMARY OF ARGUMENT

The decision of the United States Court of Appeals for the Fourth Circuit in *Bob Jones University* v. *United States* presents questions of law which are of national importance. The decision is in conflict with constitutionally protected principles of religious liberty.

ARGUMENT

The questions presented by Petitioner are of major importance to the Old Order Amish. The Amish are an insular, religious society. Their way of life has remained unchanged for centuries, and this Court has acknowledged that their religion "pervades and determines the entire mode of life of its adherents." *Wisconsin* v. *Yoder,* 406 U. S. 205, 210 (1972).

The Old Order Amish will not send their children to public schools, or to schools operated by other religious denominations. Instead, they operate their own schools, which are sufficient for their children. The right to choose those schools has long been vindicated by this Court. *Pierce* v. *Society of Sisters,* 268 U. S. 510 (1925); *Wisconsin* v. *Yoder, supra.*

Their schools would doubtless be harmed by loss of tax exemption, and that loss could result from conscientious refusal of the Amish to conform to requirements respecting race which the IRS would seek to justify in the name of "public policy". For example, Amish schools may not accept pupils or teachers pur-

suant to governmentally determined racial criteria which are in conflict with religious obligations of the Amish in the conducting of the education of their children.

Even more important to the Amish, however, is the basic principle upon which the decision of the Fourth Circuit rests—namely, that religious bodies must conform the exercise of convictions to governmentally defined "public policy." This rightly raises in the Amish mind memories of decrees of many another sovereign, in their long and difficult history, seeking to force, under penalty, conformity to the will of the state.

The Old Order Amish have lived in this country and have followed the dictates of their religion for over two and a half centuries. They exist in a modernity of their own, which is separate and apart from mainstream American culture. The "public policy" doctrine as delineated by the Court of Appeals poses a substantial threat to the Amish faith community and is plainly violative of the Religion Clauses of the First Amendment.

CONCLUSION

For all of the foregoing reasons, the National Committee for Amish Religious Freedom respectfully urges this Court to grant the Petition for Writ of Certiorari brought by Petitioner Bob Jones University.

Respectfully submitted,

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Petitioner's Brief

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No. 81-3

IN THE

Supreme Court of the United States

October Term, 1981

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

Bob Jones University, a non-tax-funded pervasively religious institution which had been recognized as tax-exempt under § 501(c)(3) of the Internal Revenue Code, holds a primary religious conviction that interracial dating and marriage are contrary to Scripture. On the grounds that § 501(c)(3) allows tax-exempt status solely to organizations which are "charitable" in the sense employed by the district court in *Green v. Connally*, 330 F. Supp. 1150 (D. D. C. 1971), *aff'd sub nom., Coit v. Green*, 440 U. S. 997 (1971), and that the institution's policy implementing that religious belief violates "public policy", the IRS revoked its recognition of Bob Jones University's tax-exempt status.

1. Did the Congress, in § 501(c)(3), require that an organization, regardless of whether it is organized and operated exclusively for religious purposes, nonetheless be "charitable" in the sense employed in *Green v. Connally*?

2. Did revocation of recognition of Bob Jones University's tax-exempt status violate rights of the institution protected by the Free Exercise Clause of the First Amendment?

3. Does the requirement of IRS, that, to be tax-exempt, a religious organization must stay in step with "expressed federal policy", as defined by IRS, violate the Establishment Clause of the First Amendment?

4. Did denial by IRS of recognition of the tax-exempt status of the institution deprive it of liberty and property without due process of law contrary to the Fifth Amendment?

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OPINIONS BELOW

The majority and dissenting opinions in the Court of Appeals are reported at 639 F. 2d 147 (1980). The reported opinion of the district court is found at 468 F. Supp. 890 (D. S. C. 1978). An additional opinion of the district court, unreported, as well as the foregoing opinions, appear as Appendices A through D of the petition for a writ of certiorari.

JURISDICTION

The case was decided and judgment was entered by the United States Court of Appeals for the Fourth Circuit on December 30, 1980. A petition for rehearing was denied April 8, 1981. The petition for a writ of certiorari was filed on July 1, 1981, and was granted on October 13, 1981. The jurisdiction of this Court was invoked under Title 28 of the United States Code § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U. S. Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

U. S. Constitution, Amendment V:

> ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law . . ."

Internal Revenue Code:

> "*Sec. 501. Exemption from tax on corporations, certain trusts, etc.*

"(a) *Exemption from taxation.*—An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle . . .

• • •

"(c) *List of exempt organizations.*—The following organizations are referred to in subsection (a):

• • •

"(3) Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals . . ."

"*Sec. 3306. Definitions.* [Federal Unemployment Tax Act].

"(c) *Employment.*—For purposes of this chapter, the term 'employment' means . . . (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, . . . except—

• • •

"(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a)";

STATEMENT OF THE CASE

Petitioner, Bob Jones University,[1] brought this action against the United States, pursuant to 28 U. S. C. § 1346 to recover $21.00 which it had paid in taxes under the Federal Unemployment Tax Act. The Government counterclaimed for approximately $490,000.00 in unemployment taxes, plus interest, allegedly due it on returns filed by the University for the years 1971 through 1975.

At issue was the revocation by the Internal Revenue Service of its recognition of the status of the University as an exempt organization under § 501(c)(3) of the Internal Revenue Code. The revocation resulted from the University's enforcement of its religious teachings concerning interracial marriage.[2] IRS contended that § 501(c)(3) exempts only organizations which are "charitable" in nature (and that whether the University was religious in purpose and character was irrelevant); that an organization which violates federal policy may not be considered to be charitable in nature; that the University's policy on interracial marriage violated federal public policy. The District Court, on both statutory and First Amendment grounds, held that the Government was without authority to revoke its recognition of the tax-exempt status of the University. The Court of Appeals reversed, holding that the Internal Revenue Service had statutory authority for its action and that that action did not violate First Amend-

1. In accord with Rule 28.1, Bob Jones University states that it is a corporation which has no parent company or subsidiary (except wholly owned subsidiaries).

2. Prior to September, 1971, that enforcement took the form of barring admission of black students. (Joint Appendix (hereinafter "JA"), A89). After that date married black students were admitted, and since May, 1975, a completely open admissions policy has been in effect. Restrictions on interracial dating and marriage among students continue to exist.

ment rights of the University. Judge Widener, of the Court of Appeals, dissented.[3]

The trial court, noting that the University accepts no financial support from local, state or federal government (P A41),[4] made findings of fact with respect to (a) the University's religious character and (b) its related religious beliefs on dating and marriage.

The trial court found the University's religious character to be pervasive and central to its existence:

> "The plaintiff [University] is dedicated to the teaching and propagation of its fundamentalist religious beliefs. Everything taught at plaintiff is taught according to the Bible . . . The cornerstone of plaintiff institution is Christian religious indoctrination, not isolated academics." (P A42).

Nearly half of the University's 5,000 students are studying for the ministry or otherwise preparing for Christian service. *Ibid.* Prayer is an enjoined and constant practice among the student body. *Ibid.* Every teacher is required to be a "born again" Christian who must testify to a saving experience with Jesus Christ. Every teacher must consider his or her mission at the University to be the training of Christian character. *Ibid.* Students are screened as to their religious beliefs, and a multitude of religious disciplinary rules addresses "almost every facet

3. Back of this litigation lies the litigation considered by this Court in *Bob Jones University v. Simon*, 416 U. S. 725 (1974), wherein the Court had held that the Anti-Injunction Act (26 U. S. C. § 7421(a)) prohibited the University from obtaining judicial review, through an injunction action, of revocation by IRS of the University's tax-exempt status. There the Court had suggested that a proper procedure for the University to gain judicial review would be to pay ". . . an installment of FICA and FUTA taxes, exhaust the Service's internal refund procedures, and then bring suit for the refund." *Id.* at 746.

4. The signal "P" refers to the Petition for Certiorari.

of a student's life." *Ibid.* Worldly amusements, such as dancing, use of tobacco, movie-going, and listening to jazz or rock music are prohibited. (P A43).

The Court of Appeals did not dispute these findings.

With respect to the second area of finding (the University's policy regarding dating and marriage) the trial court found:

> "A primary fundamentalist conviction of the plaintiff is that the Scriptures forbid interracial dating and marriage. Detailed testimony was presented at trial elucidating the Biblical foundation for these beliefs. The Court finds that the defendant [the Government] has admitted that plaintiff's [the University's] beliefs against interracial dating and marriage are genuine religious beliefs." *Ibid.*

The Court of Appeals did not dispute this finding, but affirmed it:

> "Bob Jones University believes that the Scriptures forbid interracial marriage and dating." (P A4).

The decision of the Court of Appeals was based upon four conclusions of law:

> 1. That the district court's reading of the separate references, in Section 501(c)(3), to eight different types of organizations which are entitled to tax-exempt treatment ("religious", "charitable", "scientific", etc.) was "simplistic", in that the three-judge court in *Green v. Connally,* 330 F. Supp. 1150 (D. D. C. 1971), *aff'd per curiam sub nom. Coit v. Green,* 404 U. S. 997 (1971), had reasoned that the listed eight types of organizations were *all* required to meet a common law definition of "charitable". 639 F. 2d at 151. (P A7-A8). Thus it was of no significance that the University had been found, as a matter of fact, to be "religious".

2. That the University could not qualify as a "charitable" organization if it violated "public policy". The University violated public policy by its enforcement of its beliefs relating to marriage: "specifically, the government policy against subsidizing racial discrimination in education, public or private." (P A9). This policy the court found to be "formalized" in several IRS rulings (Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Proc. 75-50, 1975-2 Cum. Bull. 587; Rev. Rul. 75-231, 1975-1 Cum. Bull. 158). (P A5).

3. That, assuming that the revocation of the University's tax-exempt status did to an extent impinge upon the University's freedom to practice religion, "[t]he government's interest in eliminating all forms of racial discrimination is compelling." (P A12). Thus its action did not violate the Free Exercise Clause.

4. That, due to the compelling state interest in enforcement of nondiscrimination, the government's action did not create Establishment Clause violation by advancing those religions which would "stay in step" with the "expressed federal policy" of nondiscrimination. Further, since the only inquiry which government would make of the University would be "whether the institution maintains racially neutral policies", no excessive entanglements would be created. (P A14-A16).

The dissenting opinion, pointing to the district court's findings respecting the religious nature of the University, as well as to language of this Court in *Bob Jones University v. Simon*, 416 U. S. 725, 734 (1974),[5] concluded that

5. "The university is devoted to the teaching and propagation of its fundamentalist religious beliefs."

"Bob Jones University is a religious organization" and stated:

> ". . . we are dealing in this case not with the right of the government to interfere in the internal affairs of a school operated by a church, but with the internal affairs of the church itself. There is no difference in this case between the government's right to take away Bob Jones' tax exemption and the government's right to take away the exemption of a church which has a rule of its internal doctrine or discipline based on race, although this church may not operate a school at all." 639 F. 2d at 156. (P A19).

The dissent stated that the majority, the IRS, and the district court in *Green v. Connally*, had misconstrued Section 501(c)(3) by insisting that all the eight types of organizations listed therein be common law "charitable" organizations. (P A21-A24). Instead Congress, by employing the common technique of legislating in the disjunctive,[6] provided that each of the eight classes be tax-exempt. Since the University falls within one of these classes ("religious"), it is exempt, and IRS cannot take away the exemption granted by Congress. The dissent denied that recognizing the tax exemption of an institution constitutes "subsidizing" it *(ibid.)*, and concluded that the public policy of the nation favoring freedom of religion may not be made subordinate to a public policy against discrimination on account of race in private, non-tax-funded religious institutions. (P A24-A37).

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6. "Each of these [the eight types of organizations] is a distinct and separate category. By the rules of statutory construction as well as common sense, the word 'or' must be read after each of the listed categories." (P A23).

SUMMARY OF ARGUMENT

Bob Jones University, as an exclusively religious organization, qualifies as a tax-exempt organization under the plain meaning of Section 501(c)(3). The Court of Appeals erred in holding that all tax-exempt organizations must be "charitable", as that term was understood by the district court in *Green v. Connally,* and thus be in conformity with "Federal public policy." The legislative history of Section 501(c)(3) is completely devoid of any expression of an intent by Congress to deny tax-exempt status to all but "charitable" (in the *Green* sense) organizations. *Green,* in which no religious issue was litigated, is erroneous in its reasoning and calls for the untenable conclusions that, to be tax-exempt, an organization must comply with anything that can be called "public policy", and that non-taxation is tantamount to subsidy. The Court of Appeals' decision, further, requires violation of the principle of separation of powers.

Bob Jones University is a pervasively religious ministry whose *raison d'etre* is the propagation of religious faith. Its rule against interracial dating is a matter of religious belief and practice. Denial of tax exemption to a religious ministry because its established teaching and practice violates "Federal public policy" violates rights of that ministry protected by the Free Exercise Clause of the First Amendment. The compelling constitutional interest in religious liberty may not be made to yield to an indefinitely stated "Federal public policy" respecting race.

The Court of Appeals' decision violates the Establishment Clause by upholding the Government's prescribing of a minimum floor of acceptable church doctrine to which every religion must subscribe or else suffer taxation. The decision likewise creates tax preferences for conforming religions, and calls for excessive entanglements of government with religious bodies since it necessitates governmental surveillance thereof in order to assure their conformity to "Federal public policy".

The power to tax is the power to destroy. Liberty and property are taken without due process of law by force of the decision below which would destroy the entire religious enterprise known as Bob Jones University solely because it follows a religiously dictated policy respecting dating by its students.

ARGUMENT

I. The Court of Appeals Erred in Its Construction of Section 501(c)(3)

Petitioners raise substantial claims under the Religion Clauses of the First Amendment. At the threshold, however, it is clear that the constitutional questions may be avoided by the Court's first considering whether the Congress intended the construction of Section 501(c)(3) imposed by the Court of Appeals. *NLRB v. Catholic Bishop of Chicago*, 440 U. S. 490, 500 (1979); *St. Martin Evangelical Lutheran Church v. South Dakota*, — U. S. —, 49 U. S. L. W. 4575, 4577 (1981). Plainly the Congress, in Section 501(c)(3), did not write a limitation that, to have tax-exempt status, a church, a school, or any other organization devoted to 501(c)(3) purposes, must have a racially nondiscriminatory policy. That section grants tax-exempt status to organizations "organized and operated exclusively for religious, charitable, . . . or educational purposes . . ." Bob Jones University qualifies as a tax-exempt organization under that provision.

The Court of Appeals, however, has construed Section 501(c)(3) to mean that each of the eight types of organization listed therein must be "charitable" as that term was understood by the three-judge court in *Green v. Connally*, 330 F. Supp. 1150 (D. D. C. 1971), *aff'd per curiam sub nom. Coit v. Green*, 404 U. S. 997 (1971). (Under that construction, the religious[7] organization which is the petitioner here, is, in the Court of Appeals' view, required to be in conformity with "public policy" or else be taxed as though it were not organized and operated for religious or other 501(c)(3) purposes.) (P A7-A8).

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7. Bob Jones University is a religious institution of the type categorized by the Supreme Court in *Lemon v. Kurtzman*, 403 U. S. 602 (1971). It does not merely "involve substantial religious activity and purpose" (*id.* at 616) but is pervasively religious. (P A40-A45). And see Point II of Argument, *infra*.

The Court of Appeals' construction is erroneous for four reasons:

1. It misreads the plain wording of the statute.

2. It is contradicted by the legislative history of the statute.

3. It adopts the incorrect rationale of the district court in *Green, supra.*

4. It requires an administrative usurpation of Congressional law-making authority.

1. The Plain Wording of Section 501(c)(3)

Section 501(c)(3) lists eight categories of purposes of exempt organizations, one of which is "charitable" and all of which are given in the disjunctive ("religious, charitable, scientific [etc.], *or* for the prevention of cruelty to children or animals"). The Court of Appeals holds that exempt organizations must all have a particular one of the purposes—namely, "charitable". The court thus rewrites the statute by erasing the disjunctive, "or", (whereby "charitable", "religious", and other purposes are given in the alternative). The court further takes a single one of the alternative purposes ("charitable") and superimposes it on all the other distinct purposes (resulting also in the redundancy that "charitable", as one of the eight purposes, must be "charitable"). That construction overthrows the established principle that words of a statute are to be interpreted in their ordinary, everyday senses (*Malat v. Riddell,* 383 U. S. 569, 571 (1966)), and that no one part of a statute should be interpreted in such a manner as to create redundancy. *Jarecki v. G. D. Searle & Co.,* 367 U. S. 303, 307-308 (1961).

In *Reiter v. Sonotone Corp.,* 442 U. S. 330 (1979) it was contended that certain wording of Section 4 of the Clayton Act ("Any person who shall be injured in his business or property . . .") should be read as "business

activity or property related to one's business." The Court rejected this attempt to transfer the meaning of one statutory term to another statutory term employed in the disjunctive:

> "That strained construction would have us ignore the disjunctive 'or' and rob the term 'property' of its independent and ordinary significance; moreover, it would convert the noun 'business' into an adjective. In construing a statute we are obliged to give effect, if possible, to every word Congress used. United States v. Menasche, 348 U. S. 528, 538, 539 . . . Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise; here it does not . . . Congress' use of the word 'or' makes plain that 'business' was not intended to modify 'property', nor was 'property' intended to modify 'business'." *Id.* at 339.

The attempt of the Court of Appeals here to make "religious" an adjective modifying "charitable" is an equally untenable construction.[8]

Further, where substantial constitutional issues under the Religion Clauses would arise by vitrue of the extension to religious institutions of a governmental requirement, this Court has held that the extension may not be left to implication, but instead "there must be present the affirmative intention of the Congress clearly expressed." *NLRB v. Catholic Bishop of Chicago, supra,* at 500. As is seen *infra,* substantial Religion Clause issues indeed arise under the Fourth Circuit's reading of the statute. The Court of Appeals sought to extend, to a religious institution, not

8. "Each of these [the eight types of organization] is a distinct and separate category. By the rules of statutory construction as well as common sense, the word 'or' must be read after each of the listed categories." Widener, J., dissenting, in Court of Appeals. (P A23).

an explicit statutory provision, such as was at issue in *Catholic Bishop*, but rather to add a requirement, not even found in the words of the statute, namely, a racial nondiscrimination provision. This presents an even more egregious breach of the *Catholic Bishop* principle than the NLRB had attempted.

2. The Legislative History of Section 501(c)(3)

The legislative history of Section 501(c)(3) reveals a total absence of any intent on the part of Congress to deny tax-exempt status to religious institutions that do not maintain a policy against racial discrimination.

The exemptions from taxation now contained in Section 501(c)(3) originated as a part of the Tariff Act of 1894, 28 Stat. 509, 556. That original statutory provision stated:

> "[N]othing herein contained shall apply to corporations, companies, or associations organized and conducted solely for charitable, religious or educational purposes."

There is no indication that Congress incorporated or had reference to a "common law of charitable trusts" in enacting this corporate income tax statute. Further, even at this beginning point, Congress clearly distinguished religious and educational corporations from charitable corporations.

After the ratification of the Sixteenth Amendment, Congress passed the Tariff Act of 1913, ch. 16, § II, 38 Stat. 114, 166. Section II G(a) exempted from the income tax:

> "[A]ny corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholders or individual."

Again the Congress separated religious and educational organizations (and now, in addition, scientific organizations) from charitable organizations. Again, there is no indication that Congress had any reference to a "common law of charitable trusts". To the contrary, if Congress had believed that common law principles[9] applied generally to its tax exemption statutes, it need not have added the requirement that, for a corporation to be exempt from taxation, no part of its net earnings could inure to the benefit of any private stockholder or individual. Under a generally accepted common law definition of "charity", no income could inure to the benefit of a private person. See 4 A. Scott, *The Law of Trusts* § 376 (2d ed. 1956). Thus, the inclusion of a requirement to that effect in the statute was completely unnecessary if Congress had intended all organizations to qualify as common law charities in order to be exempt from taxation.

In subsequent Revenue Acts, Congress continued to broaden the list of exempt purposes. See Revenue Acts of 1918 (ch. 254, § 213(6), 40 Stat. 1057), and 1921 (ch. 98, § 231(6), 42 Stat. 227), wherein again Congress maintained the distinction between "charitable" and other types of organizations.

The Internal Revenue Service itself was sensitive to this distinction, and, in I. T. 1800, II-2 C. B. 151 (1923), flatly stated:

> "It seems obvious that the intent must have been to use the word 'charitable' in Section 231(6) [the precursor of Section 501(c)(3)] in its more restricted and common meaning and not to include either religious, scientific, literary, educational, civic or social welfare organizations. Otherwise, the word 'charitable' would have been used by itself as an all-inclusive term, for in its broadest sense it includes all of the

9. That Congress could be said to legislate from any specific sense of "common law" at all is problematical in a federated Union of fifty separate jurisdictions, each pursuing its own path with respect to common law development.

> specific purposes enumerated. That the word 'charitable' was used in a restricted sense is also shown from its position in the section. The language is 'religious, charitable, scientific, literary, or education . . .'"

This substantially contemporaneous construction[10] of the tax exemption provisions of the Code accords precisely with the plain wording of the statute, and directly contradicts the construction given it by the court below.

The exemption from taxation contained in the Revenue Act of 1921 remained unchanged in the Revenue Acts of 1924, 1926, 1928 and 1932.[11] Moreover, the regulations issued by the IRS under the Revenue Act of 1924 defined the term "charitable" to mean solely "relief of the poor". Treas. Reg. 65, Art. 517, as also did the regulations under the Revenue Acts of 1926, 1928 and 1932.[12]

The Revenue Act of 1934, ch. 216, § 101(6), 48 Stat. 680, exempted from taxation the identical categories of organizations that were exempt under prior Revenue Acts, as did the Revenue Act of 1936, ch. 740, § 101(6), 49 Stat. 1648, and the Revenue Act of 1938, ch. 554, § 101(6), 52 Stat. 447. The regulations promulgated under these Revenue Acts continued to define the term "charitable" solely as "relief of the poor."[13]

In enacting Section 101(6) of the Internal Revenue Code of 1939, Congress continued to exempt from taxation

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10. See *National Muffler Dealers Association, Inc. v. United States*, 440 U. S. 472, 477 (1979).

11. Revenue Act of 1924, ch. 176, § 231(6), 43 Stat. 253; Revenue Act of 1926, ch. 20, § 231(6), 44 Stat. 9; Revenue Act of 1928, ch. 562, § 103(6), 45 Stat. 791; Revenue Act of 1932, ch. 154, § 103(6), 47 Stat. 169.

12. Treas. Reg. 69, Art. 517 (Revenue Act of 1926); Treas. Reg. 74, Art. 527 (Revenue Act of 1928); Treas. Reg. 77, Art. 527 (Revenue Act of 1932).

13. Treas. Reg. 86, Art. 101(6)-1 (Revenue Act of 1934); Treas. Reg. 94, Art. 101(6)-1 (Revenue Act of 1936); Treas. Reg. 101, Art. 101(6)-1 (Revenue Act of 1938).

the identical categories of organizations that had been exempt from taxation under the Revenue Acts of 1934, 1936 and 1938. During the fifteen years in which the 1939 Code remained in effect, the IRS issued three sets of regulations, each of which defined the term "charitable" to mean relief of poverty.[14]

Section 501(c)(3) of the Internal Revenue Code of 1954 continued to exempt the same categories of organizations that had been exempt from taxation under the 1939 Code.

The Report of the House Ways and Means Committee on the 1954 Code stated that Section 501 "is derived from sections 101 and 421 of the 1939 Code. *No change in substance has been made* except that employees' pension trusts, etc., are brought in the scope of this section." H. R. Rep. No. 1337, 83d Cong., 2d Sess. A165 (1954). (Emphasis supplied).

The position now advanced by the IRS is thus very clearly not "a substantially contemporaneous construction of the statute by those presumed to be aware of Congressional intent," *National Muffler Dealers Association, Inc. v. United States, supra,* at 477, but is simply one of recent vintage which has never been endorsed by the Congress.[15]

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14. Treas. Reg. 103, § 19.101(6)-1 (1939 Code); Treas. Reg. 111, § 19.101(6)-1 (1939 Code); Treas. Reg. 118, § 39.101(6)-1(b) (1939 Code).

15. In a footnote contained on page 8 of Senate Report 94-1318, relating to enactment of a racial nondiscrimination restriction on tax-exempt social clubs in P. L. 94-568, reference is made by the drafter of the Report to this Court's summary affirmance of *Green v. Connally, supra.* This mere reference is not remotely an endorsement of *Green's* construction of § 501(c)(3). The drafter only shows his lack of awareness of this Court's express disavowal of any precedent effect of the *Green* decision which it made in *Bob Jones University v. Simon,* 416 U. S. at 740. Nor is such a reference a reliable indicator of the intent of the Congress which enacted § 501(c)(3). *Consumer Product Safety Commission v. GTE Sylvania,* 447 U. S. 102, 118 n. 13 (1980).

3. Green v. Connally

The foundation of the Court of Appeals' opinion is the opinion (per Leventhal, J.) of the three-judge court in *Green*. That opinion, however, affords no sound basis for the denial of tax exempt-status to the religious institution now before the Court.

First: this Court, in *Bob Jones University v. Simon*, 416 U. S. 725, at 740, indicated that its affirmance of *Green* lacks the precedential weight of a case involving a truly adversary appeal to that Court.

Second: the *Green* opinion may not be utilized in any way to support policies or actions of IRS which impinge upon the liberties of religious institutions or create excessive governmental entanglements with them because no religious claimant and no Religion Clause claim was present in the Green litigation.[16] Indeed, Judge Leventhal, in his opinion in *Green*, expressly declined to consider any issues pertaining to tax exemption of *religious* bodies. See *Green, supra*, at 1168-1169.

Third: even if the *Green* opinion could be read as applying to religious institutions regardless of Free Exercise and Establishment Clause considerations, it is an

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16. Only on May 14, 1981, following the expansion (by orders issued May 5, 1980, and June 2, 1980) of the *Green* injunction to include, for the first time, religious schools, did any such school become a party to the *Green* litigation. The United States District Court for the District of Columbia on May 14, 1981, granted intervention to Clarksdale Baptist Church, Clarksdale, Mississippi, which operates Clarksdale Baptist School, and on July 13, 1981, ordered the injunction orders of May 5, 1980, and June 2, 1980, suspended "to the extent they apply to church operated schools in the State of Mississippi . . . pending final solution of the issues raised by the intervenor herein, the Clarksdale Baptist Church." The "issues" related to religious free exercise and church-state entanglements. See *Green v. Regan*, Civil Action No. 69-1355, United States District Court for the District of Columbia.

elaborate, but insupportable, effort to write a provision into the Internal Revenue Code which the Congress did not write and did not imply. The major premise laid down in the opinion is that, to be tax-exempt, an organization must be in compliance with "Federal public policy". The minor premise is that an organization which discriminates on account of race is in violation of "Federal public policy".

The conclusion is that such an organization must be denied tax exemption. The *Green* court pointed to no language wherein the Congress had said such a thing, and the long essay supplied by the court is nothing more than a mustering of reasons why the Congress could say so should the Congress ever want to. The lengthy first portion of the opinion ("General Law of Charitable Trusts", 1157-1161) is an analogy of the law of tax exemption to the law of charitable trusts. The analogy is tentative since (a) the opinion declines to conclude whether an educational organization that practices racial discrimination can qualify for existence as a charitable trust (as to that, according to the opinion, "[t]here is at least grave doubt." *Id.*, at 1157); (b) the court can only say that "the trend" in the cases is in the opposite direction of denying such qualification (here citing no cases and relying solely on Bogert[17] and two law review articles. *Id.* at 1160).

Having merely analogized to the common law of charitable trusts, the *Green* opinion continues its effort to supply substance and intent, missing in what the Congress wrote, by going on to say that this "common law referent" is not really "the ultimate criterion for determination whether such [racially discriminatory] schools are eligible" for tax exemption; that criterion is instead simply "Federal policy". *Id.* at 1161. Again, wholly lacking in the opinion is any authority in the decisions of the Su-

17. G. Bogert, The Law of Trusts and Trustees.

preme Court for the assumption that adherence to "Federal policy" (declared or undeclared in relation to the matter at hand) shall determine the tax exempt status of any 501(c)(3) organization. *Tank Truck Rentals, Inc. v. Commissioner of Internal Revenue,* 356 U. S. 30 (1958) and *Lilly v. Commissioner of Internal Revenue,* 343 U. S. 90 (1952), cited in the *Green* case, deal merely with the question of what constitutes a "necessary" business expense (which is therefore deductible). This line of cases held that a finding of "necessity" could not be made if the allowance of deduction would "frustrate sharply defined national or state policies proscribing particular kinds of conduct evidenced by some governmental declaration thereof." *Tank Truck,* at 33-34. The *Green* court's application of this phrasing, arising in the context of "necessary business expenses", is a gross misappropriation of language. The sense, for example, of *Tank Truck* is that a business expense is not "necessary" when it is incurred in violation of a state truck weight statute. Allowance of such a deduction would actually amount to rewarding a violator of state law precisely on account of that violation. *Cf., Commissioner v. Tellier,* 383 U. S. 687, 691 (1966); *Commissioner v. Sullivan,* 356 U. S. 27, 29 (1958). *Tank Truck* does not remotely establish a principle that an institution of religion or learning shall lose entirely its tax exemption if it fails, in any respect, to be in conformity with "Federal public policy".

But if, nevertheless, an uncritical view were taken of the *Green* court's principle, then nonconformity with *whatever* may be said to be "Federal public policy" necessarily brings with it denial of tax exemption. "Federal public policy" is by no means limited to policy respecting racial discrimination. The Age Discrimination in Employment Act of 1967, 29 U. S. C. § 621, *et seq.,* expresses Federal public policy "to prohibit arbitrary age discrimination in employment." The Occupational Safety and Health Act, 29 U. S. C. § 651, *et seq.,* expresses Federal public policy

"to assure so far as possible every working man and woman in the Nation safe and healthful working conditions." The General Education Provisions Act, 20 U. S. C. § 1221-1, declares it to be "the policy of the United States of America that every citizen is entitled to an education to meet his or her full potential without financial barriers." The National Environmental Policy Act of 1969, 42 U. S. C. § 4331, *et seq.*, states that it is "the continuing policy of the Federal Government . . . to create and maintain conditions under which man and nature can exist in productive harmony." It follows, if the *Green* rationale is accepted, that if any organization, otherwise exempt under § 501 (c)(3), were to discriminate on account of age, maintain unsafe or unhealthful working conditions, create any financial barrier to education, based on sex, or create any environmental disharmony, that organization's tax exemption would have to be denied.[18] Further, the rationale of *Green*, in its foundation in *Tank Truck*, embraces offenses not only to Federal public policy but also to "*state* policies proscribing particular kinds of conduct." Therefore violation by a 501(c)(3) organization of zoning laws, building codes and myriad other state proscriptive laws would necessitate revocation of federal tax exemption.[19]

The rationale of the *Green* court is also in error in its strained effort to convert non-taxation into virtual subsidy, or positive "financial support". There is of course no justification for this in a single line of the Internal

18. And for further potential consequences see T. Neuberger and T. Crumplar, *Tax Exempt Religious Schools Under Attack: Conflicting Goals of Religious Freedom and Racial Integration*, 48 Fordham L. Rev. 229, 272-273 (1979).

19. Should a tax-exempt organization be in violation of some particular Federal statute (and no such violation is here charged to petitioner), the proper means of enforcement is found in the remedial and penalty provisions of that statute, instead of in revocation of tax-exempt status.

Revenue Code, or in any decision of the Supreme Court. The rationale is necessarily contrived, being based upon a series of inapposite inferences which the court, in its apparent zeal to supply what was lacking in the mind of the Congress, seized upon. In *Walz v. Tax Commission*, 397 U. S. 664 (1970), the Supreme Court noted that tax exemptions create an "indirect economic benefit" (*id.* at 676), and stated that income tax exemption of churches represents a "benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference." *Id.* at 676-677.[20] The Court pointed to the true nature of tax exemption by noting that in refraining from taxation "government does not transfer a part of its revenue to churches but simply abstains from demanding that the church support the state."[21]

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20. "Tax exemption", said Justice Brennan in concurrence, ". . . constitutes mere passive state involvement with religion and not the affirmative involvement characteristic of outright governmental subsidy." *Id.* at 691.

21. "Furthermore, 'refraining from taxation' is not philosophically or operationally equivalent to subsidizing . . . The most essential difference—with respect to nonproducers of wealth particularly—is that tax exemption, in and of itself, conveys no money whatever to an organization, which cannot build a birdhouse or buy a bathmat with it. The only money such an organization has is what its supporters contribute to it because they believe in it. All that a tax exemption does is to permit the full value of such contributions to go to the purposes intended without diversion to the government, which the contributors already support in their own proper capacity as taxpayers. No one is compelled by tax exemption to support the organization, as they would be by taxation and appropriation. The organization's flourishing or failing is thus dependent upon its appeal to voluntary contributors rather than upon the vote of a committee of legislators dispensing funds raised from everyone by the taxing power of the state." D. KELLEY, WHY CHURCHES SHOULD NOT PAY TAXES, 12-13.

4. Separation of Powers

The *Green* opinion calls for a plain usurpation of Congressional law-making powers by the non-elected public servants of the Internal Revenue Service. Following the preliminary injunctive order of the court in *Green*,[22] IRS, by a press release of July 10, 1970, stated that private schools which maintain racially discriminatory policies were no longer eligible for tax exemption. (JA, A235). Constantly expanding its law-making under the order, IRS issued a series of rulings,[23] culminating in the Proposed Revenue Procedures in 1978 and 1979 (43 Fed. Reg. 37296 (1978) and 44 Fed. Reg. 9451 (1979)) calling for comprehensive affirmative action programs by private (including religious) schools, awarding IRS agents with accordion-like powers to exercise personal subjective discretion as to whether, for example, an Amish school had engaged in a sufficiently "active and vigorous" program to "recruit" students on the basis of race. (Proposed Revenue Procedure, February 9, 1979, § 4.03). This Court has consistently refused to permit administrative agencies to add to or rewrite laws enacted by Congress. In *Manhattan General Equipment Co. v. Commission*, 297 U. S. 129, 134-135 (1936) the Court stated:

> "The power of an administrative officer or board to administer a federal statute and to prescribe rules and regulations to that end is not the power to make law—for no such power can be delegated by Congress—but the power to adopt regulations to carry into effect the will of Congress as expressed by the statute . . . The *statute* defines the rights of the taxpayer and fixes a standard by which such rights are to be measured." (Emphasis supplied).

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22. *Green v. Kennedy*, 309 F. Supp. 1127 (D. D. C. 1970).

23. Rev. Rul. 71-447, 1971-2 Cum. Bull. 230; Rev. Proc. 72-54, 1972-2 Cum. Bull. 834; Rev. Proc. 75-50, 1975-2 Cum. Bull. 587; Rev. Rul. 75-231, 1975-1 Cum. Bull. 158.

In *Mobil Oil Corp. v. Higginbotham*, 436 U. S. 618, 625-26 (1978), this Court said:

> "There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted . . . Perhaps the wisdom we possess today would enable us to do a better job . . . than Congress did [years ago] . . . , but even if that be true, we have no authority to substitute our views for those expressed by Congress in a duly enacted statute."

There is absolutely no evidence in the legislative history of Section 501(c)(3) that Congress intended to permit the IRS to be legislators for the nation or that Congress intended to permit the IRS to selectively use the taxing power granted to Congress to enforce those public policies which the IRS, based on its own value judgments, has determined to be worthy of enforcement.

II. Application to the Petitioner Religious Ministry of the Court of Appeals' Construction of Section 501(c)(3) Violates Rights of That Ministry Protected by the Free Exercise Clause

Where governmental action is challenged as violating the Free Exercise Clause, the Court has held it necessary to inquire: (1) Is religious exercise involved? (2) If so, would the challenged governmental activity burden that exercise? (3) If it would, would that burden nonetheless be justified by a compelling governmental interest in the restriction imposed? *Thomas v. Review Board*, — U. S. —, 49 U. S. L. W. 4341, 4344 (1981).

1. Religious Exercise

A. Petitioner is a Religious Ministry. The record is clear that the petitioner is a pervasively religious ministry which the Government did not found and does not

fund. The extensive findings of the trial court with respect to Bob Jones University (see in particular Findings of Fact Nos. 1, 3, 4, 5, and 8; P A40-45) establish, beyond any possibility of contradiction, that Bob Jones University is a religious ministry.

Schools indistinguishable (in terms of constitutional significance) from petitioner have been declared by this Court to be "an integral part of this religious mission" of their sponsoring churches [24] (*Lemon v. Kurtzman*, 403 U. S. 602, 616 (1971), that mission being "the only reason for the schools' existence (*Meek v. Pittenger*, 421 U. S. 349, 366 (1975)); whose "affirmative, if not dominant, policy is to assure future adherents to a particular faith by having control of their education" (*Tilton v. Richardson*, 403 U. S. 672, 685-686 (1971); whose teachers advance the religious mission of the church-related schools in which they serve (*NLRB v. Catholic Bishop of Chicago, supra*, at 501); whose technical training "goes hand in hand with the religious mission", so that, within the school, "the two are inextricably intertwined." *Meek, supra*, at 366. And see opinion of the Seventh Circuit in *Catholic Bishop of Chicago v. NLRB*, 559 F. 2d 1112, 1119-1120 (7th Cir. 1977); *McCormick v. Hirsch*, 460 F. Supp. 1337, 1352-1354 (M. D. Pa. 1978). The Supreme Court upon its review in *Catholic*

24. The district court, in its findings of fact, stated:

"The fact that plaintiff is not affiliated with any denomination, yet, at the same time, is totally guided by its fundamentalist beliefs, attests that plaintiff is a distinct religious organization in and of itself. Plaintiff is not an educational appendage of a recognized church that may allude in its educational processes to the beliefs of the parent religious order. Instead, the organizational source of plaintiff's religious beliefs is the university. The convictions of plaintiff's faith do not merely guide its curriculum but, more importantly, dictate for it the truth therein. Bob Jones University cannot be termed a sectarian school, for it composes its own religious order." (P A44-A45).

Bishop referred to "the admitted and obvious fact that the *raison d'etre* of parochial schools is the propagation of religious faith" (440 U. S. at 503), having previously described Bob Jones University as "devoted to teaching and propagation of its fundamentalist religious beliefs" *Bob Jones University v. Simon*, 416 U. S. 725, 734 (1974).

B. The Restrictive Policy of Petitioner is a Matter of Religious Belief and Practice. The trial court found:

> "A primary fundamentalist conviction of the plaintiff is that the Scriptures forbid interracial dating and marriage. Detailed testimony was presented at trial elucidating the Biblical foundation for these beliefs.[25] The Court finds that the defendant [the Government] has admitted that plaintiff's [the University's] beliefs against interracial dating and marriage are genuine beliefs." (P A6).

The Court of Appeals affirmed this finding. (P A2). Irrelevant, under this Court's decisions, are any questions whatsoever as to whether those religious beliefs accord with any beliefs held by the Government, the public, or any other religious groups large or small, or whether those beliefs are offensive to some or unpopular with many. *Cantwell v. Connecticut*, 322 U. S. 78, 86-87 (1944); *Fowler v. Rhode Island*, 345 U. S. 67, 69-70 (1945).

2. Imposition Upon Religious Exercise

The Court of Appeals, acknowledging the presence of petitioner's religious beliefs, failed to examine the question of the effect which denial of tax exempt status would have upon the exercise thereof through the religious ministry in question. Trivializing that fundamental issue by disposing of it through a part of one sentence ("Assuming that the revocation of § 501(c)(3) status does impinge

25. JA, A66-A73.

upon the University's practice to some extent, . . ." P A12), the court moved at once to the separate issue of compelling state interest.

This Court has long insisted that religious liberty is a "preferred" freedom (*Murdock v. Pennsylvania*, 319 U. S. 105, 115 (1943)), and that the exercise of First Amendment liberties may not be conditioned upon the payment of taxes. (*Grosjean v. American Press Co.*, 297 U. S. 232 (1936)). The framers of the First Amendment were aware of, and rejected, the view that taxes might be imposed whose "main purpose . . . was to suppress the publication of comments and criticisms objectionable to the Crown." *Id.* at 248, 246. Certainly it is unthinkable today that *religious* expression may be taxed because it includes purposes objectionable to any branch of the government.[26] Had the Court dealt with the case fairly, it would have found the obvious: that the denial of tax exemption to a religious ministry which does not depend upon, or seek, public funding (P A41), and which is utterly dependent upon the religious community which it serves, is of potentially devastating effect.

While the non-taxation of such organizations is not "financial support", or a "subsidy", or in such a sense a "benefit", the imposing of taxation may well constitute a crippling burden. It is utterly misleading to say, as does the Government, that deprivation of tax exemption of the petitioner "does not compel petitioners or any other religious institution to alter their religious teachings, or compel their students to violate their benefits." (Brief for United States, 14). By the same reasoning, government could order the razing of the University's buildings and

26. As the Court stated in *Sherbert v. Verner:*

"Government may [not] . . . penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities . . . nor employ the taxing power to inhibit the dissemination of particular religious views . . ." 374 U. S. 398, 402 (1963).

the dispersal of its students without violation of religious exercise. The tax ordinance found violative of Free Exercise in *Murdock v. Pennsylvania* did not require the altering of any religious teachings or the violation of any beliefs. It was nevertheless found to burden the exercise of a religious ministry. In *Cantwell, supra,* an ordinance required (as in the instant case) a religious ministry to be in conformity with the mind of a governmental agent as a condition necessary to its evangelizing efforts; the ordinance contained no language stating that Jehovah's Witnesses must "alter their teachings" or "violate their beliefs."[27] As in *Sherbert,* the pressure on the University to forego its religious practice is "unmistakable". *Sherbert, supra,* at 404.

The burden on religious exercise must also be seen in another aspect. If the broad Fourth Circuit—*Green* principle be accepted, that tax exemption is to be denied to a religious ministry which is said to violate "Federal public policy" on racial discrimination, then that ministry necessarily is left to the congressionally uncontrolled discretion of administrative agents to determine what shall and what shall not constitute violation of that public policy and, indeed, how that policy shall be advanced. The inevitable result is seen in the post-*Green* activities of IRS, culminating in the Proposed Revenue Procedures of 1978 and 1979, *supra.* The IRS requirements contained therein were so phrased as to leave IRS employees *plenary subjective* powers to regulate religious schools, giving rise

27. One of the primary tools of the religious intolerance which caused our ancestors first to flee England, and then to erect the protective barrier of the First Amendment, was the use of the law to place restrictions or exact penalties on the use of property for nonconforming religious educational purposes. Particularly, the English courts employed the device of denying the enforcement of charitable trusts in favor of dissenting religious bodies. See J. PATERSON, LIBERTY OF THE PRESS, SPEECH, AND PUBLIC WORSHIP, 515-550 (London, 1880) and J. R. GREEN, HISTORY OF THE ENGLISH PEOPLE, vol. 3, p. 159 *et seq.* (London, 1886).

to the kinds of hazards condemned in *Keyishian v. Board of Regents*, 385 U. S. 589, 601, 604 (1967).

3. Lack of Compelling Governmental Interest

This Court has held that religious liberty may not be denied in the absence of a compelling governmental interest:

> ". . . only those interests of the highest order and those not otherwise served can overbalance claims to the free exercise of religion." *Wisconsin v. Yoder*, 406 U. S. 205, 215 (1972).

If, as the *Green*—Fourth Circuit rationale holds, tax exemption is to be denied to a religious ministry whose religious practice is deemed to violate public policy, a court is put to selecting, among myriad "public policies", those which it conceives to be of such compelling public interest as to be made superior to religious right. To the dedicated environmentalist, environmental values are certainly of "the highest order". There are those who assert population control as the supreme necessity facing mankind.[28] Examples readily multiply. Unless the concept of "compelling state interest" is extremely constricted, religious liberty remains not a preferred freedom, but is debased to being a mere privilege, enjoyed by grace of government and completely subordinate to government policy.

This Court has reviewed many religious liberty cases over the years but has found in but a handful a governmental interest of sufficient magnitude to justify the subordination to it of religious exercise.[29] As the Court has made clear in those cases:

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28. See, e.g., P. R. EHRLICH, THE POPULATION BOMB, xi.

29. See, e.g., opinions in *Reynolds v. United States*, 98 U. S. 145 (1878); *Late Corporation of Latter-Day Saints v. United States*, 136 U. S. 1 (1890); *Davis v. Beason*, 133 U. S. 333 (1890); *Jacobson v. Massachusetts*, 197 U. S. 11 (1905); *Prince v. Massachusetts*, 321 U. S. 158 (1944).

> "The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order." *Sherbert, supra,* at 403.

In all of the other cases, the religious claim has prevailed —even where the state's interest "ranks at the very apex of the function of a State." *Yoder, supra,* at 213.

In the present case the governmental interest does not concern a federal policy favoring racial nondiscrimination in public institutions, or in private institutions receiving financial assistance in the form of payments representing "inescapable educational cost." *Cf., Norwood v. Harrison,* 413 U. S. 455, 464 (1973).[30] Rather the issue is *whether the exercise of a sincerely held religious belief, by a pervasively religious private institution which is not the recipient of direct or indirect financial assistance from government, which is not charged with violation of any state or federal statute, and which poses no threat to public safety, peace or order, shall result either in the denial of its tax-exempt status, with the necessarily severe, and possibly fatal, economic harm which must result therefrom, or the compelled abandonment of an article of faith.* Merely to state that question is, in light of this Court's long tradition in the upholding of religious liberty, to point to the clear answer in the negative. Put differently: *shall the compelling constitutional interest in religious liberty be made to yield to an indefinitely stated federal public policy respecting race?*

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30. The Court in *Norwood* was careful to say that, while the State could not supply textbooks to private schools which denied admission to blacks, it could properly supply other material, costly, and indispensable "generalized services" such as electricity, water, police and fire protection to such schools. *Ibid.* Even if tax exemption were therefore considered to be "financial assistance" to a school, it would appear to be akin to the "generalized services", *i.e.,* benefits not "readily available from sources entirely independent of the state." *Ibid.*

III. Application to the Petitioner Religious Ministry of the Court of Appeals' Construction of Section 501(c)(3) Violates the Establishment Clause

In three respects the Court of Appeals' decision calls for violation of the Establishment Clause. It requires that religious bodies adhere to a governmental standard of religious practice, or else be taxed. It gives distinct and substantial official tax preference to those religions which will conform their practices to that standard. It enmeshes government in excessive entanglements with religious bodies unless the latter are willing to forego tax-exempt status. These three constitutional breaches—compelled conformity, religious preference, and entanglement—have been signally rejected in the national tradition and wisely condemned by this Court.

1. The Imposition of Conformity.

The premise has been laid down in many decisions of this Court, but nowhere better stated than in *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 642 (1943):

> "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion . . . ."

With *Barnette* the Court turned away (forever, it may be hoped) from the alluring but totalitarian view that religion must be united with the state in common thought and spirit.[31]

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31. *Gleichshaltung*, or the principle of universal coordination of belief and practice with the polity of the state in all areas of national life, was the supreme principle of unity in Nazi Germany. See R. GRUNBERGER, THE 12-YEAR REICH, 337, 481-501. The companion of this principle is the 17th century doctrine of "reason of state", whereby the prince might violate the common law "for the end of public utility." See C. J. FRIEDRICH, THE AGE OF THE

In the present case, the Court of Appeals has accepted and imposed the doctrinaire view that religious institutions must conform their practices (the expression of their beliefs) to "fundamental . . . societal values [achieved] by means of a uniform policy." (P A46). This is scarcely different from the discredited doctrine momentarily upheld in *Gobitis*,[32] that "national unity is the basis of national security." *Id.* at 595.

This concept in fact calls for the obliteration of religion itself, since there would no longer exist a doctrine or tenet of religious belief which would not be at all times subordinate to a superior regime of official orthodoxy. Nor would it be significant that, as to the expression of particular belief, government withheld its restraining hand, since the *power* to ban, to censor, to tax, or otherwise punish religion is what is crucial. "Questions of power", this Court has said, "do not depend upon the degree to which it is exercised." Per Marshall, C.J., in *Brown v. Maryland*, 25 U. S. (12 Wheat.) 419 (1827). Religion, under that concept, must always proceed within state-allowed tolerances. Under that principle, religion is merged with the state, since it can actually have no life apart from the state.

All of this may not be undercut by calling it an exaggerated concern over what, in the premises, may appear as nothing but the minor affair of imposing taxation on a small religious institution. The answer was given by Madison in his *Memorial and Remonstrance Against Religious Assessments*:

> ". . . It is proper to take alarm at the first experiment with our liberties . . . The freemen of

---

31. (Cont'd.)

BAROQUE, 16. It was precisely the application of that doctrine to the area of taxation that gave rise to the Petition of Right in England. See I H. HALLAM, THE CONSTITUTIONAL HISTORY OF ENGLAND, 229.

32. *Minersville School District v. Gobitis*, 310 U. S. 586 (1940).

America did not wait until usurped power had strengthened itself by exercise, and entangled the question in precedent. They saw all the consequences in the principle, and they avoided the consequences by denying the principle."[33]

2. Religious Preference.

The Court of Appeals' decision has the effect of creating a religious preference. Whether tax exemption is a "benefit" to a religious organization in the *Green* sense, or simply in the true sense of its being non-taxation, once the policy of taxing governmentally disfavored religions takes hold, the tax exemption of those who lockstep themselves with "Federal public policy" becomes a substantial religious preference now, and is fraught with potential for sectarian strife in the future. Once it is settled that those religions shall be taxed which fail to observe a particular "Federal public policy", it may became advantageous to particular religious bodies to generate "public policies" of their choice.

Where government preference is extended to one, or many, religions, official hostility toward non-preferred religions inevitably results. The civil disabilities imposed by English law upon Unitarians, Catholics and Jews long after toleration was granted to other sects was a consequence of *official* judgment that all persons in the realm should: a) avoid blasphemy against the Trinity; b) bear allegiance solely to the Crown; and c) adhere to Christian principle. J. Paterson, Liberty of the Press, Speech, and Public Worship, *supra*, at 535-549.[34]

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33. As quoted in dissenting opinion of Rutledge, J., in *Everson v. Board of Education*, 330 U. S. 1, 63 (1947).

34. The toleration afforded most Protestant sects was not the result of disestablishment of the Church of England, but rather was viewed as a consequence of all non-disfavored religions being, for civil purposes, "equally established." *Id.* at 529.

Our own constitutional law and tradition has mercifully eschewed such judgments, and a reappearance of state hostility to particular religious practices should not now be countenanced. An indispensable bulwark against official manipulation of religious practices has been the exemption of religious bodies from the payment of taxes:

> "A proper respect for both the Free Exercise and the Establishment Clauses compels the State to pursue a course of 'neutrality' toward religion. Yet governments have not always pursued such a course, and oppression has taken many forms, one of which has been taxation of religion. Thus, if taxation was regarded as a form of 'hostility' toward religion, 'exemption constitute[d] a reasonable and balanced attempt to guard against those dangers'." *Committee for Public Education v. Nyquist,* 413 U. S. 756, 792-793 (1973).

3. Entanglement.

This Court, in *Walz, supra,* indicated that the processes of taxation of religious activity (*e.g.,* tax valuation, tax liens, tax foreclosures, "and the direct confrontations and conflicts that follow in the train of those legal processes," *Walz,* at 674) constitute, without more, entaglements between government and religion. Yet the entangling aspects of these processes—which attend any tax—are dwarfed by the degree of government surveillance and direction necessary to apply the "social welfare yardstick" (*Walz, ibid.*) of conformity to "Federal public policy" as a condition of tax exemption.

The Internal Revenue Service's requirement that an institution maintain a policy of racial nondiscrimination extends to: charters and bylaws; all publications and advertisements; admissions; facilities; programs; administration of educational policies; athletics; and scholarship and loan programs. Churches and religious schools are

subjected to various publicity, recordkeeping and filing mandates. Revenue Procedure 75-50, 1975-2 C. B. 587.[35]

The church-state entanglements inherent in the mere administration of such a completely enveloping scheme are far beyond those condemned in *Walz*, and render nugatory this Court's warnings respecting the right of religious bodies to "establish their own rules and regulations for internal discipline and government." *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U. S. 696, 724 (1976).

A church institution thus faces a Hobson's choice: be taxed; or become entangled with government in matters intimately related to religious belief and practice.

IV. The Court of Appeals' Construction of Section 501(c)(3) Violates Petitioner's Right to Due Process of Law

A statutory prescription has now been adopted by the Court of Appeals which mandates conformity to "Federal public policy" as an integral part of Section 501(c)(3) of the Internal Revenue Code. No objective standards or limitations accompany this prescription; the Internal Revenue Service is left to work its will entirely free of legislated restrictions.

Such a prescription denies due process of law to religious institutions which receive no "fair warning" of the bounds of "Federal public policy." *Buckley v. Valeo*, 424 U. S. 1, 41 n. 48 (1976). Because the government may regulate in the area of fundamental liberties only with "narrow specificity,"[36] the lack of precision which inheres in a principle so vague as "public policy" cannot but

35. Even these requirements are viewed, by the Internal Revenue Service, as "ineffective" in guaranteeing that no manifestation of discrimination escape its attention. Hearings, Subcommittee on Oversight of the Committee on Ways and Means, House of Representatives, 96th Congress, First Session, p. 5 (Statement of Commissioner Jerome Kurtz, February 20, 1979).

36. *Keyishian, supra*, at 604.

foster "arbitrary and discriminatory application" and cause religious bodies to "steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Buckley, ibid.*, quoting *Grayned v. City of Rockford*, 408 U. S. 104, 108-109 (1972). First Amendment freedoms are especially vulnerable to standardless and ill-defined government mandates,[37] and it is difficult to conceive a mandate which exceeds the scope of "public policy" in its potential number of litmitless, varying and unprincipled applications.

CONCLUSION

For all of the foregoing reasons it is respectfully submitted that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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37. *Hynes v. Mayor of Oradell*, 425 U. S. 610, 620 (1976).

Supplemental Brief

1

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Nos. 81-1 and 81-3

IN THE

Supreme Court of the United States

October Term, 1981

GOLDSBORO CHRISTIAN SCHOOLS, INC.,
Petitioner

v.

UNITED STATES OF AMERICA

BOB JONES UNIVERSITY,
Petitioner

v.

UNITED STATES OF AMERICA

On Writs of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION OF PETITIONER BOB JONES UNIVERSITY FOR SUMMARY REVERSAL

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OCTOBER TERM, 1981

GOLDSBORO CHRISTIAN SCHOOLS, INC.,
Petitioner

v.

UNITED STATES OF AMERICA

BOB JONES UNIVERSITY,
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v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION OF PETITIONER BOB JONES UNIVERSITY FOR SUMMARY REVERSAL

Petitioner Bob Jones University hereby respectfully moves the Court for summary reversal on the ground that the Respondent United States of America has confessed error.

1. On February 24, 1982, the University filed a motion with the Court for an order directing the Government to provide the Court the date upon which the Government would fulfill its commitment to restore tax-exempt status to the University. The aim of the motion was, of course, to require the Government to remove any possible doubt respecting mootness—the mootness asserted by the Government on January 8, 1982. In the alternative the University moved the Court to allow the case to proceed in regular course.

2. On February 25, 1982, counsel for the University received a letter (see Appendix A hereto) dated February 22, 1982, from S. Allen Winborne, Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service, stating a procedure which the University should pursue in order to have its tax-exempt status restored, but also stating that such restoration could not presently be made, solely in view of the February 18, 1982, order of the United States Court of Appeals for the District of Columbia in *Wright v. Regan*. As the University has pointed out in Motion of Petitioner Bob Jones University For Order Directing Respondent to Act With Respect to Respondent's Memorandum of January 8, 1982, fn. at pages 4-5, the Government's contention that the *Wright* order has such effect is incorrect. The Government remains to this moment fully empowered to do those things necessary to render the case moot. (The University is now filing the "brief statement" to which the Winborne letter refers.)

3. On March 2, 1982, counsel for the University ascertained, in the course of a telephone call to Francis J. Lorson, Esq., Deputy Chief Clerk, that the Government, on February 25, 1982, had filed several motions. These, as of today, March 2, 1982, have not been received by

counsel for the University, although the subsequent brief of the Government, filed February 26, 1982, was received in the mail on March 1, 1982. A telephone call from the University's counsel to Lawrence G. Wallace, Esq., Acting Solicitor General, disclosed that the Government's motions included a new pledge to the Court namely, that the Government would *not* fulfill its January 8, 1982 pledge and act to render the case moot.

4. In its brief filed February 25, 1982, the United States concludes:

> "The judgments of the court of appeals should be reversed." (Brief for the United States, 52).

The Government states the basis for that conclusion as follows:

> "In the succeeding sections we argue—contrary to the Government's position below—that Section 501(c)(3) does not permit the Commissioner of Internal Revenue to withhold congressionally authorized tax exemption from otherwise qualified 'religious' and 'educational' organizations based solely on an administrative determination of failure to conform to the national policy. Our contention is, not that the policy which we fully accept and implement is wrong, but that the Internal Revenue Code—from which all the Commissioner's authority is derived—neither authorizes nor contemplates this kind of broad administrative discretion." (*Id.* at 13).

The Government has thus confessed error on an issue which is dispositive of this action, and this position is precisely that of the petitioner and of two of the four judges below who had concluded that the Commissioner had had no authority from the Congress for his challenged actions.

5. Assuming that the Government now has chosen to abandon the commitment it formally made to this Court and to the petitioners, that it would take the steps necessary to render the case moot (and that indeed it was already in the process of taking those steps), this confession of error plainly calls for a judgment of reversal, as a matter of fundamental justice. The Government had all along insisted that its actions against Bob Jones University were justified—indeed mandated—by the Congress. This insistence has been the single cause of the present litigation which has burdened the University for almost a decade. The Government of the United States of America—no ordinary litigant—has now confessed that its actions against the University were baseless. Certainly this Court is empowered to reverse, "in the interests of justice", where the Government confesses error *Petite v. United States*, 361 U. S. 529, 531 (1966), and certainly here the interests of justice would be served *solely* by the terminating of this unfounded litigation. Obviously, the Court will not mechanically accept a suggestion, or even a declaration, by the Government that a United States Court of Appeals is in error, but may choose "to examine independently the errors confessed" (*Young v. United States*, 315 U. S. 251, 258-259 (1942)), here the lines of examination to be pursued to be found in the majority and dissenting opinions of the Fourth Circuit and in the briefs of the parties. The interposition of views of any non-party, and the delay occasioned with respect thereto, would be unwarranted. Should the Court, following its independent examination, conclude that error was incorrectly confessed, oral argument could and should then ensue upon the First Amendment issues raised by the University.

CONCLUSION

The University continues to support its motion that the Government be required to inform the Court of the date upon which it will fulfill its commitment of January 8, 1982, to restore the tax-exempt status of the University, no bar existing to the carrying out of that commitment. If, however, the Government continues to refuse the restoration, then, the case not being moot, a judgment of reversal should be rendered.

Respectfully submitted,

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March 2, 1982

APPENDIX A

Internal Revenue Service
Assistant Commissioner
(Employee Plans and
Exempt Organizations)

Department of the Treasury
Washington, DC 20224

22 Feb. 1982

Mr. William B. Ball
Ball and Skelly
511 North Second Street
P.O. Box 1108
Harrisburg, PA 17108

Dear Mr. Ball:

This is to inform you of the procedures and information that would be necessary in order for Bob Jones University to be restored as tax exempt under section 501 (c)(3) of the Internal Revenue Code. As you know, on January 8, 1982 the Acting Solicitor General advised the Supreme Court that the Treasury Department had initiated the steps necessary to grant tax exempt status to Bob Jones University under Internal Revenue Code section 501(c)(3) and asked the Supreme Court to vacate the judgments of the Court of Appeals as moot.

However, Rev. Proc. 80-23 provides that in cases where section 501(c)(3) tax exempt status is recognized as a result of litigation and an application for recognition of exemption has previously been filed, the organization should submit a brief statement over the signature of a principal officer that its activities have remained the same as during the period considered by the court if such is the fact. We have attached for your information copies of the

applicable procedures to facilitate handling of your statement. Because this matter is in litigation, the statement should be filed with the Department of Justice.

As you may be aware, however, the Service was enjoined by the U. S. Court of Appeals for the District of Columbia in the case of *Wright v. Regan* on February 18, 1982, from granting or restoring "federal tax-exempt status pursuant to 26 U.S.C. § 501(c)(3) to any school that unlawfully discriminates on the basis of race, *see Runyon v. McCrary*, 427 U.S. 160 (1976), by failing to maintain a 'racially nondiscriminatory policy to students,' as that term is defined in the declaratory judgment in *Green v. Connally*, 330 F. Supp. 1150, 1179 (D.D.C.), *aff'd mem. sub nom. Coit v. Green*, 404 U.S. 997 (1971)." While this injunction is outstanding, we will be unable to restore tax exempt status to Bob Jones University.

Sincerely,

/s/ S. Allen Winborne
S. Allen Winborne

Attachments
Rev. Proc. 80-25
Rev. Proc. 80-28
Application Form 1023
Publication 557

Supplemental Brief

2

MOTION FILED
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No. 81-3

IN THE

Supreme Court of the United States

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Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

MOTION OF BOB JONES UNIVERSITY FOR LEAVE TO FILE POST-ARGUMENT BRIEF

Pursuant to Rule 35.6 of the Rules of this Court, petitioner Bob Jones University moves for leave to file the attached brief. In support of this motion movant states as follows:

1. This case is one of great consequence, involving as it does, claims of racial and religious liberty, the function of taxation, the meaning of tax exemption, the separation of powers, and the implications of many prior decisions of this Court. In recognition of its significance, the Court has invited special counsel to brief and argue the case and has received a large number of *amicus* briefs.

2. Upon oral argument, three questions were raised from the bench which appear not to have been previously addressed, or addressed in necessary detail. These questions are of importance, and it would be not only needless but unfortunate were the Court to proceed to final disposition of this case in the absence of light that can be shed upon them.

Wherefor, movant respectfully requests that its motion for leave to file the attached post-argument brief be granted.

Respectfully submitted,

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By:

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POST-ARGUMENT BRIEF OF BOB JONES UNIVERSITY

I. Absent Express Congressional Provision, IRS May Not Deny Recognition of Tax-Exempt Status to a Religious Organization on the Ground That the Organization Has Purposes or Practices of an Unlawful or "Socially Undesirable" Nature.

The question has been raised whether IRS could, if the petitioner University is correct in its reading of § 501 (c)(3), deny recognition of tax-exempt status to "Fagin's School For Pickpockets". The broader implied question is whether IRS is without power to deny such status to a

religious organization which pursues a practice contrary to "public policy."

1. Plainly the Congress could elect to employ the Internal Revenue Code not only as a revenue-gathering instrument but as "a sanction against wrongdoing." (*But see Commissioner v. Tellier*, 383 U. S. 687, 691 (1966).) The Code could then be utilized broadly as a supplement to criminal and civil statutes. It could even be used to discourage or penalize conduct not violative of any law but simply deemed socially undesirable. (It is under this last heading that invited *amicus* insists that the University must lose tax exemption.)

2. The Congress has made no such express provisions. And for all the reasons stated in the University's briefs, it is clear that the Congress has not put that vast power—of all imaginable powers—into the hands of IRS by implication.

3. Whether that power is implied (as *amicus* urges) or whether (as petitioner maintains) it would have to be expressed, it would seem the most elementary necessity to set out in so many words just what power or powers are being discussed. The wordings of the possible choices among the powers appended to § 501(c)(3) would be as follows:

> ". . . provided that an organization organized and operated exclusively for religious purposes has no practice which is violative of any law . . .", or,
>
> ". . . provided that an organization organized and operated exclusively for religious purposes has no practice which is violative of federal public policy [or is not socially beneficial] . . .", or,
>
> ". . . provided that an organization organized and operated exclusively for religious purposes has no

practice which discriminates on account of race[1] [or ethnicity, sex, age, or handicap]."

4. Under the holding of the Fourth Circuit, IRS is given a free hand to range limitlessly among these choices. But they are, absoluteiy, *legislative* choices. It is the Congress which should (and can) provide which of them shall be left to IRS—or whether the police power is best made effectual through statutes other than the Internal Revenue Code.

II. The 1959 Treasury Regulations Contradict the View That the "Charitable" Category Subsumes the Other Categories Listed in § 501(c)(3).

The University does not share the view, expressed in the Reply Brief for the United States (p. 15), that the set of regulations issued by the Treasury Department in 1959 under § 501(c)(3) should be characterized as a "nullity", since they (in the view of the United States) render the separate enumeration of exempt categories in that Section a mere exercise in redundancy. The Regulations them-

1. Racial discrimination is not, however, unique. Though the present American consensus on racial discrimination evolved from fighting a Civil War, the hard-won national policy on religious liberty has roots, reaching across the ages, in wars and persecutions, bitter and often bloody. And it would be absurd to deny IRS power also to deny tax exemption for sex discrimination—whether against females or males. *See Mississippi University for Women v. Hogan*, 102 S. Ct. 3331 (1982). The U. S. Civil Rights Commission in 1975, demanded that IRS deny tax-exempt status to educational organizations discriminating on the basis, not only of race, but of sex and indeed ethnicity. *See Proposed IRS Revenue Procedure Affecting Tax-Exemption of Private Schools, 1979: Hearings Before the Subcomm. on Oversight, Committee on Ways and Means*, 96th Cong., 1st Sess. 218 (1979) (report of U. S. Commission on Civil Rights, "The Federal Civil Rights Enforcement Effort —1974, Vol. III, To Ensure Equal Educational Opportunity").

selves contradict the view that the "charitable" category is to subsume the other listed categories. The Regulations state, in § 1.501(c)(3)-1(d)(1)(iii) thereof, that each of the enumerated purposes "is an exempt purpose in itself". Given this statement, it is apparent that the Regulations intend the term "charitable" to be a catch-all term, exempting those organizations not otherwise exempted by the specifically enumerated terms (*i.e.*, religious, scientific, etc.). Viewed this way, the redundancy which the Government fears (and which the construction of the invited *amicus* would foster) does not materialize. There is also much to commend the University's view of the Regulations: while trusts for "the advancement of religion" or for the "advancement of education" are common law charities (and therefore exempt "charitable" organizations), they are not always necessarily "religious" or "educational" in themselves (*e.g.*, a scholarship fund is not "educational" but does advance education; a fund for the purchase of church property advances religion, but is not "religious").

III. Use of the Term, "Charitable", in the Title of § 170, Does Not Make Religious Entities Exempt Only as a Species of Common Law "Charities" Under § 501 (c)(3).

It is not correct to say that the use of the term "charitable" in the title of § 170 to describe contributions made, *inter alia*, to "religious" organizations in any way indicates that the religious entities are exempt under § 501(c)(3) only as a species of "charity", and subject to all prevailing limitations imposed by the common law of charitable trusts:

First, the title of § 170 refers to "charitable, *etc.*, contributions and gifts" (emphasis supplied), indicating Congressional awareness that the term "charitable" is an

inadequate description of the types of organizations which are the subject of the Section.

Second, § 170(c) is careful to note that the term "charitable contribution" is defined precisely, and that the definition is only "for purposes of this section".

Third, the listing of the organizations in § 170(c)(2) follows precisely that contained in § 501(c)(3), enumerating "charitable" organizations separately from "religious" organizations.

Fourth, there are four other categories of organizations (not exempt from taxation under § 501(c)(3)) listed in § 170(c) to which donors may make "charitable contributions": (a) governmental entities, (b) war veterans groups, (c) domestic fraternal organizations and (d) cemetery companies. No one would seriously contend that the common law of charities comprehends all of these groups.

Respectfully submitted,

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Petitioner's Reply Brief

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No. 81-3

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REPLY BRIEF FOR PETITIONER BOB JONES UNIVERSITY

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* * *

In accord with Rule 28.1, Bob Jones University states that it is a corporation which has no parent company or subsidiary (except wholly owned subsidiaries).

INTRODUCTORY STATEMENT

The invited *amicus curiae* (hereinafter "*amicus*") seriously miscasts the record facts herein[1] and attempts to shape this case as one solely involving race, to the exclusion of the federal public policy respecting religious liberty.

I. What the Record Establishes.

No claim has been made by the Government or by *amicus*, that any mistake was committed by the trial court in its findings. In that court, not the slightest question was raised as to the credibility of any witness for Bob Jones University. Judge Chapman expressed full credence in the testimony of those witnesses and went on to make the findings of fact set forth in his opinion. These were not disturbed by the Court of Appeals. The dissenting opinion of Judge Widener described the trial court's findings of fact as "extensive and correct" and noted that "even the majority does not claim that they are clearly erroneous." P. A19.[2] The Government admitted that the University's dating and marriage regulations are based upon its *religious* beliefs and practices. P. A43. The brief of *amicus* ignores the findings and substitutes an imagined view of the facts to conform to the claims of its argument. In its Preliminary Statement (Br. A., 1-5) and elsewhere (*e.g.*, Br. A., 41-43), it presents two major errors of fact which require correction at the outset:

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1. The findings of fact by a trial court may not be set aside unless clearly erroneous. *Branti v. Finkel*, 445 U. S. 507, 512 n. 6 (1980); *see also* FED. R. CIV. P. 52(a).

2. The signal "P." refers to the Petition for Certiorari of Bob Jones University; the signal "Br. A." refers to Brief of [invited] *Amicus Curiae;* "Br. B. J." refers to the Brief for Petitioner Bob Jones University; and "J. A.", unless otherwise noted, refers to the Joint Appendix in No. 81-3.

1. *The University is not racially discriminatory.* *Amicus* states that Bob Jones University engages in "racially discriminatory practices" (Br. A., 2), specifically: "It continues to deny admission to persons who marry or date outside their race and to enforce other racially discriminatory rules." *Ibid.*

But nothing in the record supports the view that any person is denied admission to the University, or to any program or activity within it, on account of race. No complainant is before this Court or any other court making such contention. The record lays bare the University's reason for its policy: its religious doctrinal conviction, held since the University's founding in 1927, that, as the trial court found, and the Court of Appeals affirmed, "*the Scriptures forbid interracial dating and marriage*" (P. A43, P. A4 (emphasis supplied)); further, that this belief was the *sole* reason for the 1971-1975 policy[3] of the University which then accepted married blacks, but not unmarried blacks, as students. P. A4. A radio address sponsored by the University in 1960—a decade prior to any threat to the University by IRS (J. A. A95-A117)—discloses the University's beliefs: (a) in the brotherhood of *all* persons "born again" in Christ (J. A.

3. At that time this Court had not held that private schools, religious or otherwise, were prohibited from barring admission to students on account of race. This Court has never held that a religious institution which, for religious reasons, bars such admissions, acts unlawfully. Nor has it ruled that a religious institution may not observe religiously based interracial dating and marriage regulations. Thus at no point in the history of this litigation has the University acted contrary to decisions of this Court. In May, 1975, the University adopted a completely open admissions policy. *Amicus* attempts to limit this case to the period prior thereto. Br. A., 2. This limitation is specious: a) even were the case limited to the period for which IRS has counterclaimed (1971-1975), the University's open admissions policy became operative before the close of that period; b) from 1976 forward, IRS has refrained from making assessments against the University only upon the latter's stipulation preserving IRS's rights pending the outcome of this case.

A101-A102, A114); (b) that "No race is inferior in the will of God. If a race is in the will of God, it is not inferior. It is a superior race" (J. A. A100); (c) that God forbids interracial marriage. J. A. A113.[4] Particular attention of the Court is respectfully here called to the testimony at trial of Dr. Bob Jones, III, the President of the University. J. A. A64-A83. The record is bare of any evidence that the University's pre-1975 policies or post-1975 policies have been motivated other than by Scriptural belief.[5] That a religious belief is unpopular, or that a religion is held to only by a small minority, are, of course, utterly irrelevant considerations. *Cf. Cantwell v. Connecticut,* 310 U. S. 296, 310 (1940); *Larson v. Valente,* 102 S. Ct. 1673, 1683 (1982). And where a school, in these days of "liberated" youth, zealously imposes as severe and comprehensive a code of Puritan-like conduct upon students as the University's Dating Parlor or Dress Regulations (J. A. A155-158, 168-170), whose aim is plainly to mold the student totally to religious goals, it is not surprising that the institution should attract students and staff principally from its own faith community[6] and tend to reflect the racial composition of that community. J. A. A24-A25.[7]

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4. The University's marriage policy is not comparable to the state-enforced statute reviewed in *Loving v. Virginia,* 388 U. S. 1 (1967), which was rooted in concepts of white supremacy and bigotry. *Id.* at 12.

5. Contrary to the slur appearing in *amicus'* brief. Br. A., 41, n. 41.

6. In which respect the University is not dissimilar to myriad religious congregations in the nation—Jewish, Amish, African Methodist Episcopal, the Roman Catholic canonically "national" (*i.e.,* Polish, Slovak, Italian, etc.) parishes.

7. A great many applicants are referred by former students or friends of the University (J. A. A76), also by clergymen or other religious persons with whom the University is familiar. J. A. A77.

2. *The University is pervasively religious.* *Amicus* contends (Br. A., 40-44) that, because the University offers instruction in mathematics, literature, business education, etc., it is not exclusively a religious organization (or an organization devoted to achieving wholly religious goals by presenting all subjects according to religious norms, and infused with religious values). This is utterly erroneous, being contradicted by the evidence and by the specific findings of the trial court (P. A42-A45), which the Court of Appeals did not dispute. The University is a pervasively religious institution (Br. B. J., 4, 23-25) [8] which would not exist except for its religious mission. J. A. A263. The fact that the intervening Catholic, Lutheran, Hebrew and Presbyterian schools in *Lemon v. Kurtzman*, 403 U. S. 602 (1971), provided general education did not render them "secular." *Amicus'* contention is similar to that made by NLRB, in the cases involving Catholic schools: that because they taught "secular" subjects they were not "completely religious"—a concept thoroughly rejected by the courts. *Catholic Bishop of Chicago v. NLRB*, 559 F. 2d 1112, 1120-1122 (7th Cir. 1977), (and, on review here, *NLRB v. Catholic Bishop of Chicago*, 440 U. S. 490, 498-503 (1979)). *Amicus* is likewise in error when suggesting (Br. A., 9, 67) that an institution, to be "religious", must be a "church or seminary" and cannot be "a school providing accredited secular education at all levels." *See Lemon v. Kurtzman, supra*, at 616; *Tilton v. Richardson*, 403 U. S. 672, 685-686 (1971); *Meek v. Pittenger*, 421 U. S. 349, 366 (1975).

The two foregoing points but serve again to emphasize that the ultimate issue in this case is one of *religious civil rights*, that is:

Whether government may require that the exercise of a proved, long-held and sincerely held religious belief, by an institution

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8. *Amicus'* burden in seeking to overset the record on this point is great indeed. *Washington Ethical Society v. District of Columbia*, 249 F. 2d 127, 129 (D. C. Cir. 1959, Burger, J.).

—which is private, not governmental, and not a "state action" entity

—which is pervasively religious and would not exist except for its religious mission

—which does not discriminate on account of race

—of which no person complains as the alleged victim of such discrimination

—which receives no governmental subsidy

—which is not charged with violation of any law

—which poses no threat to public safety, health, peace or order,

shall, on the ground of conflict with "federal public policy", result in the denial of its tax-exempt status (with the possibly fatal harm which that may entail) unless the institution abandons observance of that article of its faith.

II. The Federal Public Policy of Religious Freedom.

The brief of *amicus* is constructed upon the central theme of the Fourth Circuit's opinion, that the controlling principle in this case is federal "public policy, rooted in our Constitution, condemning racial discrimination . . ." P. A8-A9.[9] Certainly there exists a national consensus against racial discrimination, as well as constitutional provisions and federal and state statutes penalizing such treatment of persons on account of race. Nothing in the record discloses any hostility on the part of Bob Jones University to that consensus or to those laws.

If "federal public policy" is deemed to be of such great weight and effect as to control the interpretation of enactments of Congress (*Green, supra,* at 1161), even to the extent of supplying substantive provisions thereof

9. Based in turn upon *Green v. Connally,* 330 F. Supp. 1150 (D. D. C. 1971), *aff'd. per curiam sub nom.* Coit v. Green, 404 U. S. 997 (1971), which essayed that "federal public policy" is derived from historical events, constitutional provisions and Supreme Court decisions. *Id.* at 1163.

which the Congress had failed to put into words, then assuredly the more important, venerable and universally popular a given "federal public policy" is, the more controlling its weight in the interpretive process. On the basis of the supposition of *amicus* and *Green* that "the ultimate criterion for determination whether such schools are eligible under . . . the Code rests . . . on . . . Federal policy" (*ibid.*), *the federal public policy respecting religious liberty and "equal rights of conscience"* [10] necessitates the determination that the Congress always intends its enactments to accommodate and protect, not destroy, religious liberty. Under that principle, "[s]trict or narrow construction of a statutory exemption for religious organizations is not favored" (*Larson, supra,* at 1682), and the Code can only properly be interpreted as to permit Bob Jones University to observe its challenged religious policy without loss of tax-exempt status.

The "transcendent value" of religious liberty has roots reaching beyond the past few decades or the past century. It was established in American society long before the Civil War. Its various sources, on this soil, include Roger Williams, with his plea against "an uniformity of Religion to be inacted and informed in any Civill state",[11] and William Penn with his "Holy Experiment", of an American asylum for the persecuted where "every Person . . . shall have and enjoy the Free Possession of his or her faith . . . in such way and manner As every Person shall in conscience believe is most acceptable to God. . . ." [12]

The long struggle for religious liberty in Europe, and, on this soil, especially against governmentally imposed

10. The phrase is that of Madison. See Madison, *Proposals to the Congress for a Bill of Rights, 1799.* 1 ANNALS OF CONG., 431-432 (Dales and Seaton, ed. 1799).

11. Quoted in M. S. BATES, RELIGIOUS LIBERTY, 427 (1945).

12. Quoted in C. E. OLMSTEAD, HISTORY OF RELIGION IN THE UNITED STATES, 115 (1960).

conformity to state goals,[13] culminated in the national Constitution which gave the premier place in the charter of liberties to the Religious Clauses of the First Amendment. Constitutions of all the states contain specific protections of religious liberty.[14] Numerous enactments of the Congress, including civil rights acts,[15] protect religious liberty.

This national consensus has not been one of mere toleration, wherein religion may be exercised solely within tolerances completely congruent with, or convenient to, the secular interests of the state at a particular moment—or indeed its philosophy.[16] Nor has it seen religious exercise as a mere secular value, but an independent value, antecedent to the rights of the state except in the most extreme and limited cases.[17]

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13. See generally, I A. P. STOKES, CHURCH AND STATE IN THE UNITED STATES, 65-483 (1950). *See also Associated Press v. NLRB*, 301 U. S. 103, 135 (1937); *Olmstead v. United States*, 277 U. S. 438, 479 (1928) (Brandeis, J., dissenting).

14. See generally, C. ANTIEAU, P. CARROLL and T. BURKE, RELIGION UNDER THE STATE CONSTITUTIONS (1965).

15. See, *e.g.*, Civil Rights Act of 1866, 42 U. S. C. § 1982 (as implemented by Exec. Order No. 11063, 27 Fed. Reg. 11527, further amended by Exec. Order No. 12259, 46 Fed. Reg. 12533); Civil Rights Act of 1964, 42 U. S. C. §§ 2000a, 2006-1.

16. Under which view religion is confined "to the sacristy". *See* J. C. MURRAY, THE PROBLEM OF RELIGIOUS FREEDOM, 37 (1965). *And see* D. F. Kelly, *What Makes Churches Tax Exempt?*, 128 CONG. REC. E4004 (daily ed. August 20, 1982) (Reprint).

17. See discussion *infra* at 27-30, and Brief For Petitioner Bob Jones University, 28-29.

ARGUMENT

For convenience of the Court, petitioner's reply will track the points of argument of the invited *amicus* as they numerically appear in his brief.

I. The Challenged IRS Ruling as a "Necessary Result of Fundamental Developments in Statutory and Constitutional Law". (Br. A., 11-16).

To the contrary:

1. While *amicus'* brief describes at length the history of the national consensus which has emerged against racial discrimination, quotes important language from the cases, and repeats (as its central contention) what the Fourth Circuit said of *Green v. Connally, supra,* it does nothing to overcome the fact that *Green* dealt with no challenges raised by religious claimants or under the Religion Clauses of the First Amendment. *See* Br. B. J., 17-21. Moreover, no statute is cited by *amicus,* or can be, of which, insofar as religious institutions are concerned, the IRS ruling is a "necessary result".

2. It is misleading to the Court to say, as does *amicus,* that *Green v. Connally* "should not now be overruled." Br. A., 16. No one in this litigation seeks its overruling.[18] It has been petitioner's very contention that Judge Leventhal, in the underlying opinion by him in that litigation, expressly declined to consider any issues pertaining to religious bodies.[19] The *amicus* fails to meet that contention.

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18. *Green* is plainly inapplicable. However, as the University argues in its principal brief, should *Green* be deemed applicable herein, its rationale is without sound foundation.

19. *Amicus* admits that "no religious schools were before the court in *Green v. Connally*" (Br. A., 43, n. 43), but implies that, nevertheless, any claims which Bob Jones University may have were disposed of through Judge Leventhal's dictum regarding schools "claiming divine inspiration for racial segregation." *Ibid.* Judge Leventhal in fact stated: "We are not now called upon to consider

3. *Amicus* seeks to convey the impression that IRS was powerless "against this background" (of *Green* and other decisions) to do other than to proceed to deny tax exemption to racially discriminatory schools in July, 1970 (Br. A., 14)—that is, in effect, to take the law into its own hands. As is crystal clear from a reading of *amicus'* brief (pp. 1 to 14), IRS from that date forward acted without Congressional authority and solely on the basis of extraneous legal developments.[20]

II. Congressional Intent. (Br. A., 17-44).

Nothing better illustrates the fact that the Congress never intended the construction of the statutes for which *amicus'* brief contends than the prolixity of its effort to supply what is missing in what the Congress said. The 39-page rationalization (Br. A., 18-57), with an accumulation of some 364 references, but serves to put into bold relief the fact that the Congress was always well able to have expressed the intention attributed to it by *amicus,* and that it can do so today or tomorrow—but that it never yet has done so. *Amicus* at best supplies a merely plausible justification for an unlawful self-delegation of legislative powers by the IRS or for a hoped-for equally unlawful assumption of such powers by the judiciary. To this end *amicus* advances four points:

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19. (Cont'd.)

the hypothetical inquiry whether tax-exemption or tax-deduction status may be available to a religious school that practices acts of racial restriction because of the requirements of the religion." *Green, supra,* at 1169.

20. Senator Moynihan, then a member of the Nixon Administration, and heavily involved in the decision to reverse the IRS policy in July, 1970, has admitted that the decision had not been based upon statutory grounds. *Legislation to Deny Tax Exemption to Racially Discriminatory Private Schools: Hearings Before the Senate Committee on Finance,* 97th Cong. 2nd Sess., 238 (Feb. 1, 1982).

A. Origins of §§ 501(c)(3) and 170. (Br. A., 18-24).

Amicus contends that sources outside the Internal Revenue Code, both here and abroad, were followed by Congress in choosing the categories of organizations it intended to exempt from federal income taxation, and that most notable among these sources was that formulation of the types of common law charitable trusts found in the English case of *Commissioners v. Pemsel,* [1891] A. C. 531, 583.

To the contrary:

1. While *amicus* provides a detailed description of the English law of charitable trusts, the *Pemsel* case and various state statutes, from all this the indispensable evidence is missing: *any* expression by the Congress, in enacting § 501(c)(3), that it had chosen to adopt the English law of charitable trusts or to inject the doctrine of the *Pemsel* case into the American federal law of tax exemption.

2. *Amicus* is correct, that tradition is an important source in ascertaining legislative intent, but equally important is whose tradition shall be looked to. Beneficently though much English tradition has been regarded on this soil, the English church-state relationship was a part of English tradition firmly rejected by America (*see Everson v. Board of Education,* 330 U. S. 1, 8 (1947); *Engel v. Vitale,* 370 U. S. 421, 427-428, 431 (1962)) and constitutionally unassimilable here today. *See* D. C. M. Yardley, Introduction to British Constitutional Law (1964), 96-98; E. C. S. Wade & A. W. Bradley, Constitutional Law (7th ed., 1965), 478, 480.

3. *Amicus* succeeds only in demonstrating the coincidental use of "charitable" in *Pemsel* and § 501(c)(3). But *amicus* must demonstrate much more than a mere coincidence of terms to establish a cause-and-effect link between a foreign case which is not part of the received common law of this country and the intention of Congress to reach a result which subordinates religious entities to

the many and varied requirements of the common law respecting charities. *See NLRB v. Catholic Bishop of Chicago, supra,* at 506.

4. *Amicus* points to certain references made by members of Congress to the English income tax statute when Congress enacted the Tariff Act of 1894. He fails to point out, however, that numerous references were also made to the income tax laws of many other nations.[21] Furthermore, none of the references by Congressmen to the English income tax statute were to its provisions respecting tax exemptions, or particularly to tax exemptions for religious institutions. Rather the discussion of the English law was merely part of a general discussion of the acceptability of income tax laws as fiscal measures.[22]

5. The law of charitable trusts cannot be engrafted wholesale upon religious organizations.[23] Most religious organizations are not trusts at all. Noticeably, *amicus* cites no case wherein a religious body has been subjected to sanctions under the common law of charities on the specific ground that its religious practices have not comported with "public policy".

B. The Legislative History. (Br. A., 24-28).

Amicus next contends that since certain Congressmen have employed the term "charitable" broadly in connection with certain provisions of the Internal Revenue Code, and since certain other legislative and non-legislative materials speak of deductibility of contributions to organizations which provide "social benefits", these statements indicate the settled intent of Congress to apply the "public policy" corollary to the common law of charitable trusts to all organizations which are exempt from federal income tax.

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21. 26 CONG. REC. 584-588 (1894).

22. 26 CONG. REC. 1609-1614 (1894).

23. *See* Oaks, *Trust Doctrines in Church Controversies,* 1981 B. Y. U. L. REV. 805.

To the contrary:

1. It is settled by the decisions of this Court that the legislative history of an enactment is a guide to the interpretation of a statute only when that statute is ambiguous or unclear. In all other cases, Congress is presumed to intend exactly what the clear language of its enactments provide.[24] None of the material cited by the *amicus* in any way demonstrates that Congress intended all exempt organizations to conform to the common law of charitable trusts. *Amicus* makes reference only to certain very loose descriptive remarks of individual legislators[25] who cannot remotely be understood to be discussing a grave subject involving the direct extraction from religious bodies of their stewardship funds.

2. The principle advocated by *amicus*, that tax exemption may flow only to those religious organizations which "tend to promote the well-doing and well-being of social man" (Br. A., 28), poses the most obvious danger to religious bodies. Were IRS to apply that principle, it would become arbiter of the social utility of religious activities and religious entities themselves—a religious censor, in effect. Nor can tax exemption for religious organizations be made dependent upon the "financial burden which they remove from government". Br. A., 38. Rather, religious organizations are exempt from income tax as an expression of government "neutrality" (*Committee for Public Education v. Nyquist*, 413 U. S. 756, 792 (1973)), and as a way of minimizing "involvement and entanglement between Church and State". *Id.* at 793.[26]

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24. *TVA v. Hill*, 437 U. S. 153, 184 n. 29 and 187 n. 33 (1978); *Rubin v. United States*, 449 U. S. 424, 430 (1981).

25. None of these remarks by the various legislators are entitled to the weight ascribed to them by *amicus*. *See Chrysler Corp. v. Brown*, 441 U. S. 281, 311 (1979).

26. *See also* Reiling, *Federal Taxation: What Is A Charitable Organization?*, 44 A. B. A. J. 525, 595 (1958).

C. Judicial and Administrative Construction. (Br. A., 28-34).

Amicus further contends that the Congress, in 1954 and again in 1969, adopted judicial and administrative holdings to the effect that "charitable", as used in § 501(c)(3), is a broad generic term, embracing "religious" and "educational" entities within it.

To the contrary:

1. This Court has never held that every aspect of the common law of charities is to be imposed upon religious organizations exempt from income taxation under § 501 (c)(3), nor has any decision of this Court in any way indicated that religious entities are exempt from taxation solely because they are "charities", rather than because they are religious entities and are therefore guaranteed freedom from government control. In fact, no court other than the Fourth Circuit has so held.

2. The linchpin of *amicus'* entire argument with respect to administrative interpretation of the exemption provisions is his reference (Br. A., 30), to a 1924 IRS Solicitor's Opinion dealing with the deductibility of charitable bequests under the estate tax law. *Amicus'* argument, so constructed, must fail: a) the Solicitor's Opinion dealt with the definition of the term "charitable" for estate tax deduction purposes only, in the absence of any Treasury Regulations on the point; b) the Solicitor's Opinion appears in an Internal Revenue Bulletin, the cover page of which expressly disclaims any definitive force for the ruling;[27] c) *amicus* criticizes the University's reliance on a 1923 ruling of the Income Tax Unit of IRS (I. T. 1800, II-2 C. B. 151), and, while this ruling is sub-

27. "SPECIAL ATTENTION is directed to the cautionary notice on this page that published rulings of the Bureau do not have the force and effect of Treasury decisions and that they are applicable only to the facts presented in the published case." III-1 C. B. (January-June 1924).

ject to the same disclaimer as the 1924 Solicitor's Opinion, the 1923 ruling of the Income Tax Unit is fully backed by the Treasury Regulations in force and effect at that time. *See Helvering v. New York Trust Company,* 292 U. S. 455 (1934); d) at the time the 1924 Solicitor's Opinion was issued, and thereafter until 1959, the Treasury Regulations interpreting the tax exemption provisions of the Code continued to define "charitable" as a narrow term relating only to "relief of the poor". Br. B. J., 15-16.

3. The denial by IRS of tax exemption to a discriminatory recreational facility in 1967 does not stand, as *amicus* contends (Br. A., 32), for the broad principle that all exempt organizations must be racially nondiscriminatory. The Service was very careful to limit its ruling to "charitable" organizations, which do not serve a "public" purpose because certain members of a community are excluded from a community recreational facility. Rev. Rul. 67-325, 1967-2 C. B. 113.

D. The Language of the Code. (Br. A., 35-46).

Amicus asserts that the language of the Code supports the conclusion that Congress has decreed that exempt organizations must also be "charitable" in the common law sense. In support of this proposition, *amicus* has attempted to show that Congress' use of the disjunctive "or" in § 501(c)(3) of the Code is without significance, and that Congress actually did not intend that each purpose listed there should constitute a distinct basis for exemption.

To the contrary:

1. *Amicus* cites cases in which courts have held that the word "or" does not invariably have a single meaning, and is, on occasion, construed to mean "and", but has ignored the basic rule that the word "or" indicates that the terms connected by it are to be given separate mean-

ings. *Reiter v. Sonotone Corp.*, 442 U. S. 330, 339 (1979).[28] Moreover, even if "and" were substituted for "or" in § 501(c)(3), "charitable" organizations would not thereby be elevated to a position of preeminence over the other listed categories of exempt organizations. If Congress had intended to establish that preeminence, it would have chosen the formulation: "religious, educational . . . or other charitable purposes."

2. *Amicus* has "assume[d]" (Br. A., 37) that Congress listed the various types of exempt purposes in § 501(c)(3) merely as a means of illustrating types of "charitable" organizations, and further claims that various Code headings, as well as the doctrine of *noscitur a sociis*, support this interpretation. Rather, Congress must be presumed to have chosen its words with care. *Federal Bureau of Investigation v. Abramson*, 102 S. Ct. 2054, 2065-66 (1982) (O'Connor, J., dissenting). Code headings may be used as an aid to statutory interpretation, but a basic canon of construction dictates that titles and headings cannot be used to limit the plain meaning of the text. *United States v. Minker*, 350 U. S. 179, 185 (1956). Resort to the general headings of various other Code sections to alter the specific and precise language of § 501(c)(3) is a misuse of tools of statutory construction which are designed to resolve, rather than create, ambiguity. *Russell Motor Car Co. v. United States*, 261 U. S. 514 (1923); *Brotherhood of Railroad Trainmen v. Baltimore and Ohio Railroad Co.*, 331 U. S. 519, 528-29 (1946). The rule of *noscitur a sociis* furnishes no basis for varying the chosen language of Congress. While it is true that the meaning of a word (and, consequently, the intent of a legislature) may be ascertained by the context in which that word appears, the rule is applicable only to particular words which are unclear or uncertain in meaning. *Russell Motor Car Co., supra*, at 519.

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28. *See also FCC v. Pacifica Foundation*, 438 U. S. 726, 740 (1978).

3. Rather than being merely a "brittle grammatical construction" of the exemption statute, the view that § 501(c)(3) cannot be read to nullify the distinctive nature of religious organizations by making them a mere subspecies of "charitable" organization is one which (unlike *amicus'* construction): a) does not alter or add extraneous requirements to the language of Congress; b) avoids a reading of § 501(c)(3) which would restrict or "narrow" the scope of the religious exemption (*see Larson v. Valente, supra,* at 1682); and c) fully respects this Court's admonition that religious entities are not to be subjected to governmentally imposed burdens absent the "affirmative intention of the Congress clearly expressed." *NLRB v. Catholic Bishop, supra,* at 506.

4. *Amicus'* prayed-for construction is contradicted by the Treasury Regulations which treat each category listed in § 501(c)(3) as "an exempt purpose in itself". Treas. Reg. 1.501(c)(3)-1(d)(1)(iii), T. D. 6391 (June 25, 1959). These Regulations, and not *amicus'* interpretation of § 501(c)(3), are entitled to deference. *National Muffler Dealers Association v. U. S.*, 440 U. S. 472, 476-477 (1979).

5. *Amicus* having failed in all respects to import ambiguity into the statute, the language actually chosen by Congress must "be regarded as conclusive." *Bread Political Action Committee v. F. E. C.*, 102 S. Ct. 1235, 1237 (1982).[29]

III. "Federal Public Policy". (Br. A., 15-16, 44-48).

Amicus contends that revocation of the University's tax-exempt status is necessitated by "federal public policy", a requirement allegedly contained in § 501(c)(3), though not written there. In support thereof, he relies principally upon four decisions of this Court.

29. To conclude, as does *amicus* (Br. A., 24), that *NLRB v. Amax Coal Company,* 453 U. S. 322, 329 (1981), means that Congress intended to exempt religious organizations only as a sub-species of "charities" is, for all of the foregoing reasons, a heavy overdraft on the authority of that case.

To the contrary:

1. The Supreme Court decisions cited by *amicus*[30] all deal solely with § 162(a) ("ordinary and necessary . . . expenses paid or incurred . . . in carrying on any trade or business"). In no decision has this Court suggested that the "public policy" exception in the business expense deduction cases be engrafted on the entire Code—one more substantive provision of immeasurable impact which the elected representatives of the people somehow failed to put into print.[31]

2. No decision of this Court supports the parlay of the "public policy" concept in *Tank Truck* into the "public policy" concept employed in *Green*, by the Fourth Circuit, and by *amicus*. The unanimous Tellier court stated that "the federal income tax is a tax on net income, not a sanction against wrongdoing." *Tellier, supra*, at 691. But it is precisely as a sanction against alleged wrongdoing (social "wrongdoing", that is—not law violation) that *amicus* wants Bob Jones University taxed. The University is not a law violator.[32] "Public policy" in *Tank Truck* plainly

30. *Commissioner v. Tellier*, 383 U. S. 687 (1966); *Hoover Motor Express Co. v. United States*, 356 U. S. 38 (1958); *Tank Truck Rentals, Inc. v. Commissioner*, 356 U. S. 30 (1958); and *Textile Mills Securities Corp. v. Commissioner*, 314 U. S. 326 (1941).

31. Even within the confines of § 162(a) situations, the Court, in *Tellier*, stated that "where the Congress has been wholly silent, it is only under extremely limited circumstances that the Court has countenanced exceptions to the *Sullivan*, *Lilly* and *Heininger* [*i.e.*, business expense deductibility] decisions." *Tellier, supra*, at 693-694.

32. *Amicus* raises the specter of a tax-exempt "Fagin's school for pickpockets" as a consequence of failure to apply a "public policy" limitation upon "educational" institutions. Br. A., 46, n. 46. The allusion is neither apt nor credible: a) the University exists for religious purposes—none of which purposes is the violation of criminal law; b) any organization whose existence is unlawful *in se* would

referred to avoidance of rewarding violation of weight laws where the reward would be made *on account of* that violation. "Public policy" (in that very limited sense) cannot be levitated into "national public policy" on racial discrimination, world hunger, energy defense, environment or any other such spacious areas of concern.[32]

3. As though realizing how untenable the misappropriation of *Tank Truck* may appear when seen for what it is, *amicus* attempts to hedge it by stressing that the policy against racial discrimination in education is unique (Br. A., 47), and that there are "ample safeguards" against IRS abuse. *Id.*, n. 47. But religious liberty in education is no less unique (*Pierce v. Society of Sisters*, 268 U. S. 510, 535 (1925)), and once the wild card of "federal public policy" (in the *Green* sense) is slipped into the national tax statute, there is no way to confine the results. As to the "safeguards" of being forced to litigate, or to get the Congress to move, these are dangerous and burdensome substitutes for the one true "safeguard": the clear exemption which is presently the express will of Congress.

IV. Congressional Ratification of IRS Policies. (Br. A., 48-57).

Amicus insists that the Congress has adopted "the IRS decision" (or "the IRS position") against racial discrimination through failure of the Congress to overturn those policies, and enactment of legislation subsequent to 1970 relating to exempt organizations.

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32. (Cont'd.)
seek exemption only at grave peril. Disclosing its existence to a public agency would simply invite prosecution.

33. "[I]t is a maxim, not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which these expressions are used." *Zenith Radio Corp. v. United States*, 437 U. S. 443, 462 (1978), quoting *Cohens v. Virgina*, 19 U. S. (6 Wheat.) 264, 399 (1821).

To the contrary:

1. In his entire argument on ratification, *amicus* fails to prove the one thing which would settle all argument: ratification. The reason is plain: there has been none.

2. *Amicus* is therefore principally put to arguing a negative: that the failure by Congress to disturb an administrative construction of a statute indicates Congressional adoption of that construction. His reliance on *Haig v. Agee*, 453 U. S. 280 (1981), *CBS, Inc. v. FCC*, 453 U. S. 367 (1981), and *United States v. Rutherford*, 442 U. S. 544 (1979) is misplaced. *Haig* involved a statute (the Passport Act of 1926), a particular section of which (22 U. S. C. § 211(a)) was a grant of "broad rule-making authority" to the Secretary of State. The question was whether, under the language of that section, the Secretary could continue a century-old policy of revoking passports on national security grounds. That statutory section was wholly unlike § 501(c)(3) which is not a broad grant of rule-making power, but a list of categories of exempt organizations. The fact that § 211(a) of the Passport Act invites and indeed necessitates administrative rule-making is no argument that the specificity of the provisions of § 501(c)(3) may be disregarded according to administrative preferences.[34] *CBS, Inc.*, did not turn upon Congressional acquiescence in administrative interpretation of an enactment. The Court, while acknowledging the importance of agency interpretations, noted that the agency construction therein merely "comports with the statute's language and legislative history." *Id.* at 384-385. The determinative point in *CBS, Inc.* was plainly the fact that "the language

34. The construction in *Haig* had been in existence for more than 100 years and had survived various reenactments of the same statute by the Congress. Moreover, *Haig* involved the uniquely important area of "foreign policy and national security" (*id.* at 291), and did not involve a type of statute (*i.e.*, criminal) which required "strict construction against the government". *Ibid.* The instant case, involving tax laws and religious freedoms, undoubtedly calls for strict construction. *Larson, supra*, at 1682.

employed by Congress" was "unambiguous" on its face. *Id.* at 377. In no sense does *CBS, Inc.* support *amicus'* assertion that the unambiguous language of § 501(c)(3) must now be construed according to *Green* in view of a supposed Congressional acquiescence in a temporary construction by IRS, not held by IRS before 1970 and not held by IRS today.[35] *Rutherford* involved a statute whose language the Court called "plain" (*Rutherford, supra,* at 554) but onto which it was argued that an exception be engrafted (allowance of distribution of Laetrile, in interstate commerce, for the terminally ill). Paying proper deference to the FDA's long-standing position that Congress had made no such exception, Justice Marshall, for the Court, expressed an admonition highly relevant here:

> "Under our constitutional framework, federal courts do not sit as councils of revision, empowered to rewrite legislation in accord with their own conceptions of prudent public policy."

Id. at 555.

3. *Amicus* omits any reference to this Court's recent decision in *Aaron v. SEC,* 446 U. S. 680 (1980). There, in spite of the fact that the SEC had directly informed Congress on two separate occasions of the administrative interpretation there at issue, and despite Congress' having thereafter made significant amendments to the securities laws, the Court refused to find Congressional endorsement from its mere silence:

> "[S]ince the legislative consideration of those statutes was addressed principally to matters other than at issue here, it is our view that the failure of Congress to overturn the Commission's interpretation falls far short of providing a basis to support a con-

35. By contrast, the statute reviewed in *CBS, Inc.* had never been the subject of a series of differing interpretations by the administrative agency.

> struction of § 10(b) so clearly at odds with its plain meaning and legislative history."

Id. at 694, n. 11.

4. The brief of *amicus* fails in its effort to establish that Congress has, by any affirmative act, ratified the construction of § 501(c)(3) adopted by the IRS in 1970. No general reenactment of § 501(c)(3) has occurred, nor has the exemption for religious or educational institutions been altered in any way. The one reference to the *Green* decision, in conjunction with any Congressional enactment,[36] was completely neutral, and serves as no basis for interpreting the intent of the Congress which enacted the Internal Revenue Code of 1954.[37] *See* Br. B. J., 16, n. 15. The silence of Congress therefore does not bespeak adoption of the 1970 IRS policy.

5. *Amicus* attempts to explain as inadvertence on the part of the Court the statement of this Court in *Bob Jones University v. Simon,* 416 U. S. 725, 740, n. 11 (1974) which deprived its summary affirmance in *Green* of precedential weight. Br. A., 56, n. 59. Nevertheless, from that point forward, Congress was on notice that the United States Supreme Court did not consider that *Green* had settled the issue. Consequently, when, in 1976, Congress added § 7428 to the Code (P. L. 94-455) in response to this Court's holding in *Simon, supra,* it did so with full knowledge of that fact.

6. None of the remarks by the principal sponsors of the Ashbrook-Dornan Amendments in any way lends substance to the contention that Congress affirmatively ratified the *Green* holding. At most, those few Congressmen's remarks indicate that they were trying to avoid legislat-

36. S. Rep. No. 1318, 94th Cong., 2nd Sess. (1976).

37. It is the intent of the 1954 Congress which here controls. *Oscar Mayer & Co. v. Evans,* 441 U. S. 750, 758 (1979).

ing substantively in the context of an appropriations measure.[38]

7. Several actions in the current Congress indicate that it does not agree that a racial nondiscrimination clause is contained in § 501(c)(3). Congressman Trent Lott, the Minority Whip, has filed an *amicus* brief in this case, contesting the implication. Several Senators have indicated that they would welcome the guidance of this Court on the issue.[39] And on September 16, 1982, the Senate Finance Committee voted to amend the tuition tax credit provisions of H. R. 1635, by adopting, by a vote of 17-0, the following language:

> "SEC. 6. EFFECTIVE DATE; SPECIAL RULE. (a) Certification Required.—
>
> "The amendments made by this Act shall not take effect until the Attorney General certifies to the Secretary of the Treasury that, pursuant to
>
> (1) an Act of Congress, which has been enacted, or
>
> (2) a final decision of the United States Supreme Court,
>
> the Internal Revenue Code of 1954 prohibits the granting of tax exemption under section 501(a) by reason of section 501(c)(3) to private educational institutions maintaining a racially discriminatory policy or practice as to students."

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38. A principal spokesman on behalf of the amendments did, however, state:

> "All of this controversy has continued despite the fact that the IRS lacks a single sentence of statutory authority for its actions."

127 CONG. REC. H5396 (daily ed. July 30, 1981) (Remarks of Congressman Philip Crane).

39. *See* remarks of Senator Danforth, *Legislation to Deny Tax Exemption to Racially Discriminatory Private Schools: Hearings Before the Senate Committee on Finance*, 97th Cong., 2nd Sess. (Feb. 1, 1982), p. 236; remarks of Senator Grassley, *id.* at 243; remarks of Senator Dole, *id.* at 283; statement of Senator Symms, *id.* at 4.

This statement definitively manifests the mind of the Senate Finance Committee that the Congress has not ratified the *Green* construction of § 501(c)(3).[40]

V. The Fifth Amendment Question. (Br. A., 57-62).

Amicus argues that the recognition by IRS of tax-exempt status for the University would be violative of the equal protection component of the Fifth Amendment because the tax exemption would constitute the "subsidizing" of racial discrimination. This contention *amicus* bases principally upon *Norwood v. Harrison*, 413 U. S. 455 (1973).

To the contrary:

1. At the philosophic level: The fact of not being taxed does not make one the recipient of a subsidy. *Amicus'* whole argument hangs upon a facile three-stage conversion of the term, "tax exemption", into "tax benefits", into "subsidy". (From there on, it is easy to free-wheel about "diverting funds", getting "matching grants", etc. (Br. A., 59).)[41] Sound foundation for *amicus'* proposition does not exist, and if it did, the results would be preposterous. Were Bob Jones University not taxed, it would not be "subsidized" but merely an organization not compelled to divert to the government precious funds entrusted to its stewardship solely for the religious purposes sought to be realized by its religious followers.[42]

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40. S. Con. Res. 59, 97th Cong., 2d Sess. (1982), which would have expressly ratified the IRS policy, retroactive to 1970, has attracted the support of barely more than one-fourth of the members of the Senate. Similar measures in the House have attracted substantially less support. *See*, H. R. Res. 318, 97th Cong., 2d Sess. (1982); H. R. Con. Res. 245, 97th Cong., 2d Sess. (1982); H. R. Con. Res. 24C, 97th Cong., 2d Sess. (1982); H. R. 5378, 97th Cong., 2d Sess. (1982).

41. This danger has been well perceived by Professor Bittker. *See*, Bittker, *Churches, Taxes and the Constitution*, 78 YALE L. J. 1285, 1290-1291 (1969).

42. Not remotely does the § 170 deduction "provide even greater financial aid" (Br. A., 59) than tax exemption, nor (like exemption)

2. *Norwood*, the centerpiece of *amicus'* Fifth Amendment contention, is not in point, as comparison with the instant case at once reveals. In *Norwood* no claim under the Religion Clauses was raised; they are the heart of the University's claim here. *Norwood* did not involve tax exemption or tax deductibility; this case concerns nothing else. In *Norwood* the beneficiaries of the "tangible" and direct "assistance" were racially discriminatory schools; Bob Jones University is racially non-discriminatory.

3. To establish a discriminatory legislative purpose, there must be a showing that the enactment was made "at least in part 'because of', not merely 'in spite of', its adverse effects upon an identifiable group." *Personnel Administrator v. Feeney*, 442 U. S. 256, 279-280 (1979). Nothing can be clearer than the absolute absence of any such motivation from § 501(c)(3)'s text or history. The statute is racially "neutral". Unable to show otherwise, *amicus* contends that no discriminatory Congressional purpose need here be shown. His one cited authority for that proposition is *Norwood*. But in *Norwood*, the Court laid down no hard rule on intent and engaged in no discussion thereof parallel to its extensive explorations in subsequent cases.[43] And *Norwood* arose in the context of Southern

42. (Cont'd.)
any "aid" (in the "subsidy" sense) at all. While the Court, in *Walz*, could properly describe tax exemption as an "indirect economic benefit", tax deductibility, in two ways, is obviously even more indirect. The "benefit" runs primarily to the donor taxpayer (and only up to a certain fraction of his contributions, 26 U. S. C. § 170(b)), not to the donee organization. And, § 170 simply opens up an *option* to the donor taxpayer to donate or not to donate to one or some of myriad organizations. In the whole world of potential donors, it is possible that none may choose to contribute to any organization, and the donor's own filter of choice may exclude any particular organization.

43. *Washington v. Davis*, 426 U. S. 229, 239-248 (1976); *Feeney, supra*, at 279-280; *General Building Contractors v. Pennsylvania*, 102 S. Ct. 3141, 3146-3153 (1982).

"massive resistance" programs of the 1960's purposefully designed to frustrate desegregation (*see Flagg Brothers, Inc. v. Brooks*, 436 U. S. 149, 163 (1978)), with which the Court had been involved for more than a decade. A major feature thereof was Mississippi's expansion of its textbook loan program to accommodate schools "already . . . adjudged by . . . United States Courts as racially segregated and which have been formed for the purpose of providing white students with an alternative to racially integrated, non-discriminatory public schools." *Norwood v. Harrison*, 340 F. Supp. 1003, 1005 (N. D. Miss. 1972). The particular thrust of the action was against "racially segregated schools, established in Mississippi since 1964 . . ." *Id.* at 1010; *Norwood v. Harrison*, 382 F. Supp. 921, 924-925 (N. D. Miss. 1974).

4. Nothing which *amicus* adds, in his further contentions respecting the supposed "subsidy", overcomes the conclusion that no "subsidy" here exists. *Amicus* cites to *Bob Jones University v. Simon, supra*, at 729-730, wherein this Court recited the obvious fact that revocation of a § 501(c)(3) ruling letter and removal from the Cumulative List "is likely to result in serious damage". The University, in its principal brief herein, has gone even farther and described revocation as resulting in "severe and possibly fatal" harm to the institution. Br. B. J., 29. But that fact no more renders tax-exempt status a "subsidy" than would the fact of a fatal blow being dealt a person imply that the person, in his previous state of normal health, had somehow been the recipient of a boon, grant or benefit conferred by the subsequent assailant.

5. *Amicus*, at pages 59-61 of his brief, unaccountably represents the position of the University to be: that, because some forms of governmental aid (including tax exemption) are *religiously* "neutral", therefore the University is entitled to the governmental "aid" of tax exemption. That, of course, is a straw man, easy for *amicus* to demolish. That is not remotely the position of the University, and it is noteworthy that *amicus* cites no

portion of its brief which so contends. *Amicus* (Br. A., 61) states that *Norwood's* citation to *Committee for Public Education v. Nyquist,* 413 U. S. 756 (1973), "is of particular significance". *Nyquist,* indeed, is of particular significance: Justice Powell, writing for the Court, made it clear that the tax reimbursement program for parents there at issue ". . . does not have the elements of a genuine tax deduction, such as for charitable contributions." *Id.* at 790, n. 49. But more significant was the *Nyquist* Court's characterization of the religious tax exemption previously upheld in *Walz*:

> "To be sure, the exemption of church property from taxation conferred a benefit, albeit an indirect and incidental one. *Yet, that 'aid' was a product not of any purpose or intent to support or subsidize,* but of a fiscal arrangement designed to minimize involvement and entanglement between Church and State." *Id.* at 793. (Emphasis supplied).

Tax exemption for religious entities thus stands on a unique constitutional footing which precludes its being considered "subsidy" in any context.

6. *Amicus,* in insisting that tax exemption is "subsidy", "financial assistance" (in the "subsidy" sense), a diversion of "funds", etc., conceives that the principle for which he thus contends could be tidily limited to this case. To the contrary, the principle would be boundless in its significance and chaotic ultimately for all § 501(c)(3) organizations. If tax exemption of a religious organization is a "subsidy", then all religious organizations (including all churches) in the nation must be deemed governmentally subsidized.[44] Discrimination against aliens

44. "Does the tax-exempt status of the Catholic Church make 'every American taxpayer a forced contributor' to the Church? One supposes the First Amendment would forbid tax exemptions for all religious institutions if this logic held true. But that is not what most people think, and the Supreme Court emphatically endorsed this conventional wisdom in its 1970 decision, *Walz v. Tax Com-*

(*Plyler v. Doe,* 102 S. Ct. 2382 (1982)), illegitimates (*Trimble v. Gordon,* 430 U. S. 762 (1977)), or on account of sex (*Mississippi University for Women v. Hogan,* 102 S. Ct. 3331 (1982)) have also been held violative of equal protection. Potential violations of equal rights of other "insular and discrete minorities"—religious, the aged, the handicapped—abound.[45]

The Fifth Amendment claim of *amicus* is entirely without substance.

VI. The Effect of the Religion Clauses. (Br. A., 63-69).

Amicus, in response to the University's stated constitutional position under the Religion Clauses (Br. B. J., 23-34), contends that tax exemption is "subsidy", that the University is not really a religious institution, that only an "indirect and insignificant" burden is placed on religious practice by denial of the University's tax-exempt status, that any governmental interest is sufficient to justify injury to religious exercise, and that no religious preference results from taxing the religious institution which cannot recant doctrine and practice to conform to governmental policy, but exempting those which do conform.[46]

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44. (Cont'd.)
missioner . . . No doubt tax exemptions are very helpful to the church; yet the Court still held that tax exemptions are not (in constitutional terms) a subsidy, but a means of avoiding 'excessive entanglement' between church and state." Rabkin, *Behind The Tax-Exempt Schools Debate,* 68 THE PUBLIC INTEREST 21, 24 (1982).

45. Indeed, if *amicus'* supposition is correct, that government may not "subsidize" activities which unlawfully discriminate, then actions by exempt organizations violative of anti-discrimination *statutes* must also result in loss of exemption. *See, e.g.,* Rehabilitation Act of 1973, § 504, 29 U. S. C. § 794; Age Discrimination in Employment Act of 1967, 29 U. S. C. § 621, *et seq.*

46. *Amicus* fails to make answer to the University's arguments on entanglement (Br. B. J., 33-34) or on due process. Br. B. J., 34-35.

To the contrary:

1. The Court is respectfully referred to prior discussion herein (pp. 23-26) as to the "subsidy" question and the fact that the University is a religious ministry.

2. Nothing could be farther from the truth than *amicus'* assertion that the statute, as interpreted by the Fourth Circuit, "at most imposes only an indirect and insignificant burden upon religious practice." Br. A. 64, n. 67.[47] *Amicus'* point is that the University is free to "practice" its religious convictions on marriage (Br. A., 63-64) but must suffer the irreparable harm attendant upon loss of its tax-exempt status if it does so.[48] *Amicus'* analogy to *Braunfeld v. Brown,* 366 U. S. 599 (1961), is not apt. In *Braunfeld* no religious practice of the Orthodox Jews was the focus of a claim of penalty; rather the law impeded a secular practice (selling goods). An analogy would exist if, in that case, state law had denied tax-exempt status to an Orthodox synagogue because it conducted worship on Saturdays.

3. *Amicus* ignores the test laid down by this Court in *Sherbert v. Verner,* 374 U. S. 398, 403 (1963), respecting the validity of governmental action challenged as violating Free Exercise rights, and infers that any mere "governmental interest" suffices as justification for such action. Br. A. 63, 65. If that were so, then *any* statute, challenged as being in conflict with religious liberty, would prevail, since every statute must be presumed to serve a "govern-

47. *Amicus* belies his own assertion by his insistence throughout his brief that tax-exemption constitutes a direct and significant benefit. Br. A., *passim.*

48. Such a penalty would be far more devasting in its impact than would result from any remedy authorized in a § 1981 action in a proceeding brought by actual complainants having standing. And the penalty to donors of the University of loss of deductibility of contributions would not similarly attach to contributions made by a donor, or to taxes paid by a taxpayer, to a racially segregative public school system under §§ 170(c)(1) and 164 of the Code.

mental interest", and most, in fact, do. *United States v. Lee*, 102 S. Ct. 1051 (1982), in no way overruled the *Sherbert* requirement of proof of a "compelling state interest" to justify a particular imposition upon religious liberty or *Sherbert's* further requirement respecting "least restrictive means". Nor is *Lee* comparable. There the followers of a religious sect entered into a wholly commercial activity and, on religious grounds, sought relief from payment of Social Security taxes. The University's activity is religious, not commercial. In *Lee* the Court was able to show in detail how the relief sought from payment of Social Security taxes would have undermined the soundness of a program supporting 36 million citizens (*id.* at 1055) and threatened the functioning of the national tax system. *Id.* at 1059. By contrast, no showing was made by the Fourth Circuit, or by *amicus*, of any concrete governmental interest which would be threatened by the University's pursuit of its always-held doctrine on marriage while having tax-exempt status.

4. If the University were, in fact, in actual violation of any statute, alternative means less restrictive of the University's religious liberties than denial of its tax-exempt status would be available under those statutes. Certainly the Internal Revenue Code was not designed to supplement or supplant provisions of the Civil Rights Act, or of any other civil or criminal statute which, in one way or another, may regulate private religious institutions. It does great violence to the concept of ordered liberty that *the whole life of the institution, including its every aspect and activity*, is mortally threatened on the basis of but a single policy which it pursues, and in ignorance of its positive contributions to 5,000 young people per year.

5. On the issue of religious preference raised by the University, *amicus* cites the familiar principle stated in *McGowan v. Maryland*, 366 U. S. 420 (1961), that a statute's disparate impact among religions is permissible where caused merely by the statute's happening to co-

incide with the beliefs of some of them. Br. A. 67. Here, however, one religious body, among all § 501(c)(3) religious organizations, is denied tax-exempt status precisely because of its adherence to a particular religiously dictated practice. § 501(c)(3) has the effect, under *amicus'* reading thereof, of causing those religious groups whose theology is compatible with that reading to avoid being taxed while causing those whose theology is not thus compatible to be subjected to tax. If it be established principle that every religious body must "be equally at liberty to exercise and propagate its beliefs" *Larson v. Valente, supra,* at 1683, then it is clear that Bob Jones University, if held subject to taxation, would be unconstitutionally disadvantaged relatively to conforming § 501 (c)(3) religious bodies.

CONCLUSION

For all of the foregoing reasons, as well as for the reasons stated in Brief For Petitioner, Bob Jones University, it is respectfully requested that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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Petitioner's Reply Brief

2

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

RECEIVED
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SUPREME COURT, U.S.

No. 81-1

GOLDSBORO CHRISTIAN SCHOOLS, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 81-3

BOB JONES UNIVERSITY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writs of Certiorari to the
United States Court of Appeals for the
Fourth Circuit

PETITIONER BOB JONES UNIVERSITY'S RESPONSE TO PETITIONER GOLDSBORO CHRISTIAN SCHOOLS, INC.'S MOTION FOR DIVIDED ARGUMENT AND ADDITIONAL TIME

Petitioner Goldsboro Christian Schools, Inc., has moved the Court

(a) that 15 minutes additional time be granted petitioners, so that counsel for Bob Jones University would have 30 minutes for oral argument and counsel for Goldsboro Christian Schools, Inc., would have fifteen minutes for argument;

(b) but that, if such additional time is denied, the argument time be divided to allow 20 minutes for counsel for Bob Jones University and 10 minutes for counsel for Goldsboro Christian Schools, Inc.

In response to that motion, petitioner Bob Jones University states that, due to the extreme importance of this case nationally, it supports the motion insofar as it seeks the granting of 15 minutes of additional time for oral argument.

However, should such additional time not be granted, Bob Jones University opposes the motion insofar as it seeks divided argument, in that (assuming allowance of one half hour per side) the argument for petitioners in this consolidated litigation would clearly best be presented by one counsel. The issues of statutory construction and constitutionality raised by Bob Jones University include all issues raised by Goldsboro Christian Schools, Inc., the interests of the two institutions are not in conflict, and, within the confines of one half hour, a single comprehensive presentation will best serve justice and the Court.

Respectfully submitted,

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IN THE SUPREME COURT
OF THE UNITED STATES

BOB JONES UNIVERSITY,	:	
Petitioner,	:	
v.	:	No. 81-3
UNITED STATES OF AMERICA,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that, on the 3rd day of December, 1981, I caused to be served, pursuant to Rule 28.3 of the Rules of the Supreme Court of the United States, upon the following persons, by first class mail, postage pre-paid, one copy of Petitioner Bob Jones University's Response to Petitioner Goldsboro Christian Schools, Inc.'s Motion for Divided Argument and Additiona. Time in the above entitled case:

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William Bentley Ball
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Amicus Brief

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No. 81-3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

BOB JONES UNIVERSITY
Petitioner

—against—

UNITED STATES
Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF *AMICI CURIAE*
OF THE AMERICAN BAPTIST CHURCHES IN THE U.S.A. JOINED BY THE UNITED PRESBYTERIAN CHURCH IN THE U.S.A.

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QUESTIONS PRESENTED

1. May the I.R.S. require that a religious organization, to be tax-exempt, must conform to "expressed federal policy" as defined by the I.R.S. when so to conform would require serious alteration of sincerely held religious beliefs?

2. May the I.R.S., in effect, establish the criteria for membership in a church by threatening the loss of tax exemption?

3. May the I.R.S. disregard the Establishment Clause tests set by this Court and the statutory requirements of § 501(c)(3) set by Congress in determining the tax exemption of religious organizations under § 501(c)(3)?

4. May Congress provide for tax exemption of a class of organizations without that provision constituting state sponsorship or subsidy?

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No. 81-3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

BOB JONES UNIVERSITY, *Petitioner*

—against—

UNITED STATES, *Respondents*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF OF THE AMERICAN BAPTIST CHURCHES IN THE U.S.A. JOINED BY THE UNITED PRESBYTERIAN CHURCH IN THE U.S.A. AS *AMICI CURIAE*

INTEREST OF THE *AMICI*

At the outset of the statement of the Interest of the *Amici* in this case, *amici* are compelled to make four brief statements:

1. *Amici* emphatically state that they disagree with Petitioner's beliefs on human relations.
2. *Amici* hold that those beliefs are racist and, for that reason, reflect a faulty interpretation of the Bible and its teachings on human relations.
3. *Amici* specifically repudiate any form of racism for any reason.
4. *Amici* are of the opinion that the beliefs held by Petitioner are sincerely held and are protected by the First Amendment.

The American Baptist Churches in the U.S.A. is a national Baptist denomination, of some 6000 congregations with some 1,613,000 members, which embraces the tradi-

tional Baptist demand for the preservation of religious liberty and the separation of church and state. A recent declaration of the Executive Director of the Baptist Joint Committee on Public Affairs, of which the American Baptist Churches in the U.S.A. is a cooperating member, reflects *amicus*' beliefs on the case at bar and delineates its interest in that case: "The Baptist Joint Committee on Public Affairs, which represents eight Baptist denominations with some 27 million constituent members, strongly objects to any attempt by the government to force—by threat of loss of tax exemption—any religious organization to alter sincerely held religious beliefs to conform to public policy arbitrarily defined by a government agency such as the Internal Revenue Service [I.R.S.]. To do otherwise would be un-Baptistic and anti-Baptistic."* The very essence of religious liberty is involved in this case. The American Baptist Churches in the U.S.A. is compelled by sincerely held religious beliefs to speak to the issues raised by this case.

The United Presbyterian Church in the United States of America [UPCUSA] on December 31, 1980 had 2,434,033 members and 14,502 ordained ministers, organized into 8,832 neighborhood churches. These churches are governed by representatives elected to boards called sessions. The neighborhood churches are organized into 152 governing bodies called presbyteries, in turn grouped into 15 governing bodies called synods. Fifteen synods, 152 presbyteries, 8,832 neighborhood churches, and 2,434,033 church members are governed by the General Assembly.

Amicus considers the issues presented in this case to be important to the UPCUSA and to all other churches in this country. The UPCUSA adheres to the principle of organic separation of church and state and the constitutional right to exercise religion free from the control, regulation, pressure and influence of government. *Amicus* believes that these principles and rights would be breached if the arguments of the United States of America in the instant case were affirmed.

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*November 11, 1981 in Jackson, Mississippi before the annual meeting of the Mississippi Baptist Convention.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amici will discuss only issues which involve the following:

U.S. Constitution Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

Internal Revenue Code:

> "*Sec.* 501. *Exemption from tax on corporations, certain trusts, etc.*
>
> "(a) *Exemption from taxation.*—An organization described in subsection (c) . . . shall be exempt from taxation under this subtitle. . . .
>
> * * *
>
> "(c) *List of exempt organizations.*—The following organizations are referred to in subsection (a):
>
> * * *
>
> "(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation . . . and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

QUESTIONS PRESENTED

The decision below raises four major questions which *amici* will address in this brief: (1) May the I.R.S. require that a religious organization, to be tax-exempt, must conform to "expressed federal policy" as defined by the I.R.S.

when so to conform would require serious alteration of sincerely held religious beliefs? (2) May the I.R.S., in effect, establish the criteria for membership in a church by threatening the loss of tax exemption? (3) May the I.R.S. disregard the Establishment Clause tests set by this Court and the statutory requirements of § 501(c)(3) set by Congress in determining the tax exemption of religious organizations under § 501(c)(3)? (4) May Congress provide for tax exemption of a class of organizations without that provision constituting state sponsorship or subsidy?

STATEMENT OF THE CASE

The facts of this case are clearly, fully, and correctly stated in Petitioner's Brief on the Merits. *Amici* have nothing to add to the facts as stated.

Amici do not agree that the two cases combined by this Court for the purpose of oral argument are "identical twins." *Amici's* arguments will address only the issues and decisions raised by Petitioner Bob Jones University. In this brief *amici*, when referring to "Petitioner," are referring *only* to Bob Jones University.

SUMMARY OF ARGUMENT

The argument may be briefly summarized as follows:

1. A statutory exemption of religious organizations from taxation does not constitute state aid to or sponsorship of religion.

2. The I.R.S. exceeded its statutory authority by adding its "public policy" test to the criteria for tax exemption established by Congress in § 501(c)(3) of the Internal Revenue Code.

3. The I.R.S. may not require Petitioner to forego constitutional rights in order to secure the statutory privilege of tax exemption.

4. The state lacks competence directly or indirectly to establish the criteria for membership in a religious organization.

5. First Amendment rights are fundamental rights which

take precedence over public policy evolved from non-First Amendment rights.

ARGUMENT

The First Amendment to the Constitution of the United States is a limitation on the power of government and may not be read as a limitation on the rights of the people. All laws passed by Congress are subject to that limitation. Administrative regulations and decisions must adhere to the letter and spirit of enabling statutes and, consequently, to the constitutional limitations.

Under very limited circumstances the state may limit or proscribe certain religious actions of individuals or organizations, *see Wisconsin* v. *Yoder*, 406 U.S. 205 (1972), but the state may not bootstrap on its legitimate powers to achieve an unconstitutional power *over* religion.

Amici argue that the I.R.S. has attempted to exert power *over* religion in the case at bar.

1. A statutory provision for exemption of an organization from taxation does not constitute a form of state sponsorship or subsidy.

The threshold question in the instant case is whether a decision by the state to exempt from taxation a broad class of private nonprofit organizations, including religious organizations, constitutes a form of state sponsorship or subsidy. The I.R.S. seems to assume that tax exemption is a kind of sponsorship or subsidy which constitutes state action. Therefore, it asserts the degree of jurisdiction over tax-exempt nonprofit organizations which allows it to require Petitioner, a religious nonprofit organization, to choose between its sincerely held religious beliefs and its tax exemption.

In *amici's* view, statutory tax exemption of nonprofit organizations is neither state sponsorship nor subsidy but is a corollary of the nonprofit character of voluntary associations which do not create wealth and, thus, are not a part of the revenue system. As legal scholars have stated:

> The exemption of nonprofit organizations from federal income taxation is neither a special privi-

> lege nor a hidden subsidy. Rather, it reflects the application of established principles of income taxation to organizations which, unlike the typical business corporation, do not seek profit.*

In the floor debate on the Revenue Act of 1913, the author of the Act, Cordell Hull, objected to enumerating explicit categories of exemption on the grounds that the law was designed to tax specific categories and those not specifically listed would be exempt:

> Of course any kind of society or corporation that is not doing business for profit and not acquiring profit would not come within the meaning of the taxing clause. . . . I see no occasion whatever for undertaking to particularize. 50 *Cong. Rec.* 1306 (1913).

The legislative history of § 501(c)(3) and its predecessors clearly indicates that tax exemption of this class of organizations was not intended to be and is not a special privilege or subsidy given to some organizations because of meritorious behavior or denied to others because they lack that behavior. It derives solely from the nonprofit character of the exempt organization. This Court recognized this fact in its statement on the exemption of nonprofit religious organizations from *ad valorem* taxes in New York. In *Walz* v. *Tax Commission of the City of New York*, 397 U.S. 664 (1970) at 675, 676, the Court stated:

> The grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state. No one has ever suggested that tax exemption has converted libraries, art galleries, or hospitals into arms of the state or put employees "on the public payroll." There is no genuine nexus between tax exemption and establishment of religion. As Mr. Justice Holmes commented in a related context "a

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*Bittker and Rahdert, "The Exemption of Nonprofit Organizations from Federal Income Taxation," 85 *Yale L. J.* 299 (1976) at 357, 358. *See also* D. M. Kelley, *Why Churches Should Not Pay Taxes* (New York 1977).

> page of history is worth a volume of logic." . . . The exemption creates only a minimal and remote involvement between church and state and far less than taxation of churches. It restricts the fiscal relationship between church and state, and tends to complement and reinforce the desired separation insulating each from the other.

It is the view of *amici*—and apparently of this Court—that tax exemption of religious organizations is neither direct nor indirect aid to religion but is simply a situation of refraining from demanding that the church support the state, and of distancing the government from the whole spectrum of nonprofit voluntary organizations whose members already support the state through their own individual taxes. Tax exemption is the way the government refrains from taxing them again for voluntary activity which benefits the public—or parts of it—without enriching the taxpayers who undertake it.

As we have said, tax exemption of a broad class of nonprofit organizations is not aid or sponsorship. It is a natural and logical attribute of all nonprofit voluntary organizations and must not be predicated on their conformity to arbitrarily determined "public policy" at a particular time or place. If these organizations engage in illegal activities, the remedy may be found in civil or criminal causes of action but not in the loss of tax exemption. When the nonprofit organization is also a religious organization, the religion clauses of the First Amendment must be considered also. These organizations and their leaders remain subject to civil and criminal action but not to "public policy" determinations of the I.R.S.

2. The I.R.S. has exceeded its statutory authority and, thereby, usurped congressional authority in its decision to revoke Petitioner's § 501(c)(3) status on public policy grounds.

The statutory criteria for an organization to qualify for tax exemption under § 501(c)(3) of the Internal Revenue Code are clear: the organization must fall within specific categories of nonprofit organizations, it must not substantially attempt to influence legislation, and it must not be-

come involved in partisan politics. The I.R.S. seeks to add a fourth criterion: the organization must not go contrary to whatever the I.R.S. subjectively and arbitrarily determines to be public policy—even when sincerely held religious beliefs compel the organization to go contrary to that determination.

The I.R.S., along with other administrative entities, has broad general powers to promulgate rules and regulations necessary for the enforcement of laws passed by Congress. However, these powers do not include the formulation of a public policy test which is beyond the scope of the laws being enforced. *See NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490 (1979).

Congress did not add to § 501(c)(3) any criteria concerning racial discrimination which would exclude an organization from inclusion in the class. § 7805(a) of the Internal Revenue Code authorizes the issuance of regulations "as may be necessary by reason of any alteration of law in relation to internal revenue." There having been no "alteration of law" the I.R.S.'s actions are *ultra vires*.

The I.R.S. clearly did not rely on the legislative history of § 501(c)(3) or its predecessors in seeking authorization for revoking Petitioner's tax-exempt status. As a matter of fact, the most recent expression of congressional intent in this area is the Ashbrook Amendment, P. L. 96–74, 93 Stat. 599 § 103. That amendment to the Appropriations Act provided that none of the appropriated money be used to carry out any rule, policy, or procedure issued after August 21, 1978 which would cause church schools to lose § 501 (c)(3) status over the issue of public policy on racial enrollment in those schools. Whatever the effect of the Amendment, the sense of Congress was to repudiate the I.R.S. approach to the matter.

The fact that Petitioner is a religious organization of necessity brings the religion clauses of the First Amendment into consideration. This Court held in *Catholic Bishop*, *supra*, at 501, that the bases for rules and regulations must not be implication or deduction but that "'the affirmative intent of Congress [must be] clearly expressed' before concluding that the Act grants jurisdiction."

We submit that § 501(c)(3) clearly does not express the intent of Congress that the I.R.S. has the authority to revoke the § 501(c)(3) status of religious organizations on public policy grounds.

3. The state may not require the relinquishment of a constitutional right as the price of gaining the statutory privilege of tax exemption.

Generally all § 501(c)(3) organizations depend on that classification for their very existence. They do not seek a profit and must receive contributions to prevent annual losses and ultimate failure. Membership in the class of § 501(c)(3) organizations entitles contributors to a tax deduction under § 170(a).

When one of those § 501(c)(3) organizations is a religious organization, the First Amendment comes into play—particularly when sincerely held religious beliefs are at stake. In *Murdock* v. *Commonwealth of Pennsylvania*, 319 U.S. 105 (1943) at 112, this Court spoke to the taxation of religious practices: "Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance." If the I.R.S. actions in the instant case are sustained, Petitioner's life as an organization, if it is to be true to its religious beliefs, is doomed. Neither our forebears nor this Court have countenanced the position that the state may destroy a religious organization through administrative fiat.

Petitioner in the case at bar has sincerely held religious beliefs on separation of the races. Both of the courts below evidenced their acceptance of those beliefs as sincere and integral to Petitioner's theology. Government enters into a forbidden domain when it inquires into the correctness or incorrectness of those beliefs. *United States* v. *Ballard*, 322 U.S. 78 (1944) at 87. *See also Cantwell* v. *State of Connecticut*, 310 U.S. 296 (1940) at 303; *Murdock* v. *Pennsylvania*, *supra*. The First Amendment serves as a guarantee against such examination.

> [T]o define the limits of religious expression may be impossible if philosophically desirable. Moreover, any definition of religion would seem to violate religious freedom in that it would dictate to

> religions, present and future, what they must be.*

In the case at bar the state, through its agent the I.R.S., has, in essence, said to Petitioner, "Either change your theological beliefs on race relations or forego tax exemption and tax-deductible contributions." This is a choice which the I.R.S. constitutionally may not require of a religious organization.

> . . . as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence. *Frost* v. *Railroad Commission*, 271 U.S. 583 (1926) at 593, 594. *See also Lemon* v. *Kurtzman*, 310 F.Supp. 35 (D.C. Pa. 1969), *reversed on other grounds*, 403 U.S. 602 (1971).

By its actions the I.R.S. has put Petitioner in an untenable position and itself in the position of attempting to manipulate out of existance a segment of religious rights guaranteed by the First Amendment.

4. The state may not directly or indirectly establish the criteria for membership in a religious organization.

Such a statement would seem to be axiomatic and yet, in effect, the I.R.S. is doing precisely that in the case at bar and is doing so by threatening the loss of tax exemption for failure to comply.

A religious organization, under the First Amendment guarantees, must be the sole determiner of the qualifications for its own membership. The state has no legal or theological competence in this matter. The religious organiza-

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*Weiss, "Privilege, Posture, and Protection—Religion in the Law," 73 *Yale L. J.* 593 (1964) at 604.

tion may require that applicants be "born again," be baptized in a particular way at a particular age, be tithers, or be of a particular racial or ethnic background. In short, under the First Amendment a religious organization may discriminate in the acceptance of members. An Orthodox Jewish congregation may not be required by the state to open its membership to Baptists. A Black Muslim organization may require that all its adherents be black. The state can play no role in those determinations. To permit the state a role would be to destroy the religious organization itself.

In the case at bar the lower courts agreed that Petitioner is a religious organization in its own right. As such, Petitioner has the right under the First Amendment, *amici* contend, to establish the criteria for admission into its fellowship and for retention of good standing in that fellowship. Concomitantly, the state has no role to play in establishing criteria for fellowship and, also under the First Amendment, cannot force its way into such a role through threatening the loss of tax exemption.

At the very least such actions constitute state action *respecting* an establishment of religion.

> A law may be one "respecting" the forbidden objective while falling short of its total realization. A law "respecting" the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not *establish* a state religion but nevertheless be one "respecting" that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment. *Lemon* v. *Kurtzman*, *supra*, 403 U.S. at 612 (*emphasis in original*).

If state action effectively determines the criteria for membership in a religious organization such as Petitioner, that action is at least "a step that could lead to such establishment." If the state can determine the parameters of membership for a relatively small, somewhat unpopular religious organization, can it do so for others? Such a determination would be a clear preference for one form of religious

organization. The state may not prefer one form of religious organization over others.

Amici contend that the action of the I.R.S. in the case at bar of setting the criteria for fellowship in a religious organization goes beyond an action "respecting an establishment of religion" and reaches "the forbidden objective" of establishing a religion. That is, it fails the last two of the establishment tests enunciated in *Lemon* v. *Kurtzman*, *supra*, at 612, 613. The principal or primary effect of state action to set criteria of fellowship in a religious organization is to exhibit a hostility toward sincerely held religious beliefs, thereby chilling Petitioner's religious actions and requiring Petitioner to choose between the sincerely held religious beliefs and tax exemption. Further, the setting of criteria of fellowship would require an excessive entanglement with religion by necessitating a continuing monitoring of the fellowship practices and procedures of religious organizations.

5. First Amendment rights, which include the guarantee of religious liberty, are fundamental rights and public policy relating to non-First Amendment rights must defer to First Amendment rights.

This Court has held that the First Amendment rights are "the transcendent value," *Norwood* v. *Harrison*, 413 U.S. 455 (1973) at 469, and "rank high 'in the scale of our national values,'" *NLRB* v. *Catholic Bishop of Chicago*, *supra*, at 501. In cases involving First Amendment rights the burden is on the state to show that its actions do not infringe those rights. It is the position of *amici* that the government has not carried and cannot carry that burden.

Further, this Court has emphasized that the preferred position which the First Amendment gives to religion is not limited to the so-called "mainline" or popular religions. "The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position." *United States* v. *Ballard*, *supra*, at 87.

As *amici* have indicated, they do not agree with the theological beliefs of Petitioner and wish that it believed other-

wise. However, public policy dealing with non-First Amendment rights must, generally, give way to those beliefs.

> With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. *Davis* v. *Beason*, 133 U.S. 333 (1890) at 342, 343, quoted with approval in *United States* v. *Ballard*, *supra*, at 87.

There has been no showing below that either the peace, prosperity, or morals of the people are interfered with by Petitioner's racial criteria for admission to or retention in what is a religious fellowship.

The I.R.S. has set itself up to be the sole determiner of the content of public policy as it relates to tax matters. It asserts that if it discovers a § 501(c)(3) religious organization whose practices pursuant to sincerely held religious beliefs are contrary to what the I.R.S. has determined to be public policy, it can legitimately make the organization choose between its beliefs and tax exemption. This is clearly not what the Code states, nor is the I.R.S. public policy test in the instant case based on securing the "peace and prosperity, and the morals of its people. . . ."

Unless First Amendment rights prevail against such arbitrary application of a public policy test by the I.R.S., religious liberty is seriously at risk. If there is a public policy against discrimination on the basis of sex, could a religious organization be denied tax exemption because the tenets of its faith forbid it to ordain women to its priesthood? If the country were in a state of war, would the tax exemption of traditional peace churches such as the Society of Friends and the Church of the Brethren be in jeopardy?

It is clear that the First Amendment freedoms form the foundation of our free society. To allow public policy, defined arbitrarily even though based on non-First Amendment rights, to impinge on fundamental First Amendment

freedoms is both unwise and unconstitutional. As this Court has said in *Houchins* v. *KQED, Inc.*, 438 U.S. 1 (1978) at 13:

> We must not confuse what is "good," "desirable," or "expedient" with what is constitutionally commanded by the First Amendment. To do so is to trivialize constitutional adjudication.

CONCLUSIONS

Amici are agreed that racism is wrong and that Petitioner's reading of what the Bible teaches about human relations is faulty. However, the wrongness of racism cannot be the real issue in this case. As this Court said in *Commissioner* v. *Tellier*, 383 U.S. 687 (1966) at 691:

> We start with the proposition that the federal income tax is a tax on net income, not a sanction against wrongdoing. That principle has been firmly imbedded in the tax statute from the beginning. One familiar facet of the principle is the truism that the statute does not concern itself with the lawfulness of the income that it taxes.

The I.R.S. has used its asserted power under § 501(c)(3) as a sanction against what it unilaterally determines to be wrongdoing but which Petitioner asserts is not wrongdoing but simply the following of sincere religious beliefs.

The very existence of a religious organization is at stake in this case. Chief Justice Marshall, speaking for the Court in *M'Culloch* v. *Maryland*, 4 Wheat. 316 (1819) at 431, stated that the power to tax *involves* the power to destroy. Even if the power to tax does not involve the power to destroy, it does involve the power to define and control—and such power, when applied to religious organizations, is contrary to the letter and the intent of the religion clauses of the First Amendment.

For the reasons stated above *amici* pray this Court to reverse the decision of the court below and to affirm again the primacy of religious liberty and the separation of church and state in this nation's scale of social and legal values.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Earl W. Trent, Jr., certify that I have mailed three copies of the foregoing Brief *Amici Curiae* to each of the Attorneys of Record in this case, on November 27, 1981.

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No. 81-3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF AMICUS CURIAE OF THE CENTER FOR LAW AND RELIGIOUS FREEDOM OF THE CHRISTIAN LEGAL SOCIETY IN SUPPORT OF PETITIONER

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BRIEF AMICUS CURIAE OF THE CENTER FOR LAW AND RELIGIOUS FREEDOM OF THE CHRISTIAN LEGAL SOCIETY IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE

The Christian Legal Society is a non-profit Illinois corporation founded in 1961 as a professional association of Christian judges, attorneys, law professors, and law students. Today it includes over 3,500 members throughout the United States. The Center for Law and Religious Freedom is a division of the Christian Legal Society founded in

1975 to protect and promote the freedom of Christians and others in the exercise of their religious beliefs.

The Center sees in the decision below a serious threat to religious liberty. Accordingly, the Center seeks to describe the principles that should apply to the protection of religious liberty in the context of this case. The letters from the parties consenting to the filing of this brief are submitted herewith to the Clerk pursuant to Rule 36.2.

ARGUMENT

The decision below, if allowed to stand, would endanger religious liberty in two ways. First, the decision expands the range of governmental interests that can override a religious conviction, by making an ill-defined concept of "public policy" paramount over religious liberty. This standard dilutes the substantive protection of free exercise. Second, the decision allows the infringement of religious liberty by administrative and judicial fiat, when Congress has yet to pass a law requiring or permitting such infringement. The decision thus abandons the procedural protection that the system of separate and balanced powers was meant to provide for religious liberty as well as all other liberties. Amicus will discuss first the substantive aspect of this case, and second the procedural aspect.

I. THE DENIAL OF TAX EXEMPT STATUS TO THE PETITIONER UNIVERSITY VIOLATES ITS FREE EXERCISE OF RELIGION.

A. THE DENIAL OF TAX EXEMPT STATUS INFRINGES UPON THE UNIVERSITY'S SINCERELY HELD RELIGIOUS BELIEF.

The unchallenged factual findings of the district court establish for purposes of this case that petitioner Bob Jones University acts on the basis of a religious conviction in excluding students who date or marry persons of a dif-

ferent race. The district court found that the University's beliefs against interracial dating and marriage are "genuine religious beliefs," which are based on the University's interpretation of the Bible. *Bob Jones University* v. *United States* 468 F. Supp. 890, 894 (D.S.C. 1978). The court found that the University was a "distinct religious organization" which screens its students to ensure that they comply with the University's religious-based rules. *Id.* at 894-95. In providing for the expulsion of students who violate the rules against interracial marriage and dating, the University engages in "the practice of its religious convictions." *Id.* at 898. The court of appeals found no error in these findings. *Bob Jones University* v. *United States,* 639 F.2d 147, 149, 153 (4th Cir. 1980). Thus for the Government to coerce the University to admit students who marry or date persons of a different race constitutes an infringement of a sincerely held religious belief.[1]

Whatever one may think of the University's beliefs,[2] any

---

[1] The court of appeals intimated that even if the Government forced the University to abandon its policy, no infringement of religious belief would result, because the University would remain free to believe and teach against interracial marriage and dating. But the unchallenged factual findings of the district court establish that the University's policy on interracial dating and marriage is a matter of religious conviction. The first amendment protects not only one's religious beliefs, but one's right to act in accordance with them. Otherwise the right to believe would be of little worth. Therefore, the first amendment issue in this case cannot be avoided by the Government's suggestion that the Internal Revenue Service "did not encroach upon any activity entitled to affirmative constitutional protection." Brief for the United States, on Petitions for Writs of Certiorari, at 14.

[2] Amicus does not subscribe to or condone the University's beliefs in question here. The truth or falsity of the University's beliefs is not relevant here. *United States* v. *Ballard,* 322 U.S. 78, 87 (1944). Amicus deems this case to be crucial because diluted constitutional protection for unpopular religious beliefs dilutes protection for all religious beliefs.

religious belief which is sincerely held enjoys the protection of the free exercise clause. The first amendment guarantees not only the abstract right to believe, but the concrete right to act on one's beliefs. *Cantwell* v. *Connecticut*, 310 U.S. 296, 303-04 (1940). Government may neither prohibit nor severely burden the exercise of one's beliefs:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.

Thomas v. *Review Board*, 101 S. Ct. 1425, 1432 (1981). *See Sherbert* v. *Verner*, 374 U.S. 398, 404 (1963). The denial of tax exempt status to any private university that relies heavily on tax deductible contributions is obviously a heavy burden and severe infringement on free exercise.

B. THE GOVERNMENT HAS NOT SHOWN A COMPELLING STATE INTEREST OF THE HIGHEST ORDER.

This Court has allowed infringement of religious beliefs only when necessary to a compelling state interest "of the highest order." *Wisconsin* v. *Yoder*, 406 U.S. 205, 215 (1972). The paramount importance of freedom of religion demands that the category of compelling interests be narrowly confined within clear limits. Decisions of this Court have staked out the appropriately narrow limits of this category. Thus, the Court has allowed infringement of sincere religious beliefs when necessary to preserve the public order against a practice, polygamy, deemed "subversive of good order," *Reynolds* v. *United States*, 98 U.S. 145, 164 (1879); when necessary to raise armed forces to defend the country, *Gillette* v. *United States*, 401 U.S. 437, 462

(1971); or when necessary to prevent "harm to the physical or mental health" of children, or harm to the "public safety, peace, order, or welfare," *Wisconsin* v. *Yoder, supra,* 406 U.S. at 230. *See also Prince* v. *Massachusetts,* 321 U.S. 158, 169-70 (1944). By contrast, the Court has upheld religious liberty claims even against such a strong governmental interest as the universal education of children. *Wisconsin* v. *Yoder, supra,* 406 U.S. at 234.

The decision below expands the category of compelling interests to a dangerous extent. The earlier precedents have all involved substantial threats to public safety, order, or peace. *Sherbert* v. *Verner, supra,* 374-U.S. at 403. Only the most serious danger could possible outweigh the paramount value of preserving inviolate each person's conscience, however misguided that conscience may be in a particular case.

The "public policy" standard advanced by the Internal Revenue Service, however, substitutes a vague and easily expanded standard in place of the narrow limits set by this Court. "Public policy" goes far beyond the objective dangers to public safety and order, to include the subjective opinions of electoral majorities and policy-making elites as to what constitutes wise social policy. At the core of the first amendment is the protection of ideas and related actions that are contrary to the prevailing orthodoxy. But a "public policy" standard would allow the prevailing orthodoxy to justify regulation of dissenting ideas and actions. Thus, the "public policy" standard threatens to condone infringement of precisely those religious beliefs that may be most out of step with public opinion and therefore most in need of constitutional protection.

The present case appears difficult because the public policy at issue is so laudable. But a justifiable desire to affirm this policy must not ignore the proper standard for judging an infringement of religious liberty. The decisive point in this case is that the University's exercise of its beliefs

does not threaten public safety, order, peace, or health.

Disagreement with the University's policy should not be resolved by the infringement of a sincere religious belief. Nor should those who disagree with the University's interpretation of Scripture seek to establish their own view toward interracial marriage as the only one acceptable for tax exempt religious organizations. The University's policy is one of the costs of a pluralistic system of religious liberty. To prevent the Government from suppressing the University's policy is not to advocate Government support for discrimination, but simply to affirm the principle of constitutional protection for the free exercise of unpopular beliefs.

C. TO ELEVATE PUBLIC POLICY ABOVE RELIGIOUS LIBERTY WOULD THREATEN OTHER RELIGIOUS PRACTICES.

The decision below opens the way to denial of tax exempt status not only for schools, but also for churches whose sincerely held beliefs may discriminate against minorities. The district court found that the University was not only a school but a "distinct religious organization." 468 F. Supp. at 895. The reasoning of the court of appeals allows "public policy" to override the religious convictions of any organization, whether church or school, when those convictions require exclusion of persons according to racially discriminatory criteria. If the decision below is allowed to stand, it will simply require a pronouncement by the Internal Revenue Service to eliminate tax exempt status for all churches that exclude or expel members for interracial marriage or dating. The goal of ending racial discrimination should not be achieved at the expense of suppressing sincerely held religious beliefs and practices.

The prevention of racial discrimination is only one of a number of public policies that could come into conflict with religious convictions of churches and individual be-

lievers. Other tax exempt churches and religious groups make demands that often require their members to surrender certain constitutional rights, just as Bob Jones University requires its students to abandon for a time their constitutional right to marry someone of another race, (*Loving v. Virginia*, 388 U.S. 1, 12 (1967)). For example, the Roman Catholic Church requires those entering the priesthood or religious orders to abandon completely the constitutional right to marry, (*Zablocki* v. *Redhail*, 434 U.S. 374, 383-84 (1978). Moreover, any religious group that opposes abortion may well choose to exclude from membership any woman who exercises her "constitutional right" declared in *Roe* v. *Wade*, 410 U.S. 113, 154 (1973).

The court of appeals opinion thus invites a head-on clash of public policy against sincerely held religious convictions across a potentially broad front. Such a clash need not occur and, under the first amendment, should not occur. The clash has occurred in this case only because the court of appeals assumed that public policy automatically applies to the whole realm of society and governs the tax exempt status of private institutions, whether or not those institutions dissent from a public policy out of religious conviction. *See* 639 F.2d at 153. But the anti-discrimination policy of the fourteenth amendment applies to the sphere of *governmental* action. This anti-discrimination policy has been extended to private action for selected matters, including the sale of private housing (Fair Housing Act of 1968, 42 U.S.C. § 3601 *et seq.* (1976)), the formation of contracts (42 U.S.C. § 1981), and the admission of students to schools other than "sectarian" schools (*Runyon* v. *McCrary*, 427 U.S. 160 (1976)). But this policy has not been extended to *all* private action. *See Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163 (1972).

It is a mistake to assume that a public policy automatically applies to all private conduct, especially when the conduct is mandated by religious conviction. A public policy can be applied to the most important spheres of private con-

duct, while leaving other spheres free for the exercise of dissenting views. The decision whether to extend the anti-discrimination policy to particular spheres of private conduct has been made in the past on the basis of *legislation*. Because of the sensitive interest in liberty for religious groups that dissent from prevailing public policy, we must insure that such policies are extended into the sphere of private conduct of religious institutions *only* by a deliberate act of the legislature. Such procedural considerations are essential to the security of religious liberties and are addressed in detail in the following section.

II. RELIGIOUS LIBERTY MAY NOT BE INFRINGED BY ADMINISTRATIVE OR JUDICIAL ACTION ABSENT CLEAR STATUTORY AUTHORIZATION.

Even if the elimination of racial discrimination by religious organizations were a compelling interest of the highest order, the Government cannot impose such a public policy by administrative action without clear authorization by statute. Agencies and courts may not strain to reach statutory interpretations that infringe religious liberty. On the contrary, Congress is presumed not to intend to infringe any constitutional liberty unless it expressly so provides by statute. Unless explicitly authorized by Congress, an agency's decision to infringe free exercise must therefore be struck down by this Court.

A. THE DECISION BELOW FAILED TO CONSTRUE THE GOVERNING STATUTES TO AVOID DIFFICULT CONSTITUTIONAL QUESTIONS.

It is an established principle that statutes are to be construed, if possible, to avoid constitutional difficulties:

> When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitution-

> ality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.

Crowell v. *Benson*, 285 U.S. 22, 62 (1932). *Accord, Califano* v. *Yamasaki*, 442 U.S. 682, 693 (1979); *Curtis* v. *Loether*, 415 U.S. 189, 192 n.6 (1974); *Machinists* v. *Street*, 367 U.S. 740, 749-50 (1961); *Ashwander* v. *TVA*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring).

Before an agency may regulate the exercise of a constitutionally protected right, there must be a clear expression of congressional intent to regulate that activity. *United States* v. *Robel*, 389 U.S. 258, 277 (1967) (Brennan, J., concurring); *Greene* v. *McElroy*, 360 U.S. 474, 507 (1959); *Kent* v. *Dulles*, 357 U.S. 116, 129 (1958). Because the rights protected by the religion clauses are such vital liberties, courts should examine with special concern any infringements of religious convictions that are not grounded upon a clear expression of congressional intent. This Court has held that, "in the absence of a clear expression of Congress' intent . . ., we decline to construe the Act in a manner that could in turn call upon the Court to resolve difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979).

There is no statute that revokes or denies tax exempt status for religious organizations that discriminate on the basis of race. The court of appeals rested on the Constitution's prohibition of racial discrimination (639 F.2d at 151), even though the fifth and fourteenth amendments affect only governmental discrimination, not discrimination by religious organizations. The court also spoke of a policy against "subsidizing" racial discrimination in education, *id.*; but a tax exemption is fundamentally different from a subsidy, and does not connote government sponsorship. *Walz*

v. *Tax Commission,* 397 U.S. 664, 672-75 (1970); *id.* at 690 (Brennan, J., concurring).

The court of appeals further relied on the 1866 Civil Rights Act, 42 U.S.C. § 1981, which has been held to prohibit racial discrimination in private school admission policies. *Runyon* v. *McCrary,* 427 U.S. 160 (1976). But that decision expressly refused to decide whether section 1981 can be construed to override such admission policies for religious organizations. However section 1981 may be interpreted, it does not pertain to tax exemptions or provide for denial of tax exempt status as a remedy for a violation of section 1981. Moreover, the policy protecting interracial marriage, *Loving* v. *Virginia,* 388 U.S. 1 (1967), applies only to governmental action and has never before had any effect on the tax exempt status of private organizations.

The only statute that clearly applies to the question of tax exemption for the petitioner University is 26 U.S.C. § 501(c)(3), which grants tax exempt status to any organization that is organized and operated for any of eight enumerated purposes, including religious, educational, or charitable. The district court made the undisputed finding that the University is educational and religious within the meaning of this statutory provision. Since the statute contains no qualifying terms concerning racial discrimination or any other public policy,[8] the plain terms of the statute confer tax exempt status on the University.

Section 501(c)(3) must be construed, whenever possible, to avoid infringing religious liberty. Such construction is easily achieved in this case by applying the plain words of the statute. The court below violated a governing principle of statutory construction by rejecting the constitutionally sound plain meaning of the statute in favor of a constitution-

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[8] The only additional qualifications imposed by statute are that a tax exempt organization be nonprofit and not engage substantially in efforts to influence legislation. 26 U.S.C. §§ 170, 501 (1976).

ally questionable inferential meaning. Strict statutory construction is imperative when religious liberties are at stake.

B. THE GOVERNMENT'S POSITION WOULD VEST AN AGENCY WITH UNCONSTITUTIONALLY BROAD DISCRETION TO INFRINGE A CONSTITUTIONAL RIGHT.

Even if Congress *had* given the Internal Revenue Service authority to define public policies and to deny tax exempt status to organizations that violate those policies, such a system would be unconstitutional. The doctrine against delegation of legislative power is applicable when broad administrative discretion would threaten constitutional liberties. In such instances, liberty is best protected when decisions are made by an elected body responsible to the people.

> The need for a legislative judgment is especially acute here, since it is imperative when liberty and the exercise of fundamental freedoms are involved that constitutional rights not be unduly infringed.

United States v. *Robel, supra,* 389 U.S. at 277 (Brennan, J., concurring) (citing *Cantwell* v. *Connecticut, supra,* 310 U.S. at 304). Decisions of great constitutional import—such as the infringement of a religious conviction—must not be "relegated by default to administrators." *Greene* v. *McElroy, supra,* 360 U.S. at 507.

Without any clear guidance from Congress, the Internal Revenue Service has taken upon itself to decide whether the federal policy against racial discrimination applies to religious institutions, to decide whether that policy should be implemented by means of a denial of tax exempt status, and to decide whether that policy can override religious convictions protected by the first amendment. Such a role for an agency represents the most extreme form of overbroad delegation in the most sensitive legislative area

of all. The potential for abuse and oppression in this procedural system is enormous.[4]

The delegation of legislative power to an agency without statutory guidance runs the risk of arbitrary and oppressive enforcement by administrative officials. The potential for abuse is even greater when the agency asserts that it possesses delegated authority to ascertain and apply such a vague and all-inclusive concept as "public policy." If the Government's position is allowed, the meaning of "public policy" would be resolved on an ad hoc, subjective basis by agencies and courts. *Cf. Grayned* v. *City of Rockford*, 408 U.S. 104, 108-09 (1972). This breadth of discretion would invite public officials "to determine which expressions of view will be permitted and which will not. . . ." *Cox* v. *Louisiana*, 379 U.S. 536, 557 (1965). *See Cantwell* v. *Connecticut, supra*, 310 U.S. at 305-06.

The constitutional procedure for denying tax exempt status to religious institutions that discriminate on the basis of race would be for Congress so to provide by statute. Such a statute would still have to be reviewed to see if it was justified by a compelling interest as described in Part I, *supra*. But the Government procedure in the present case cannot possibly pass constitutional muster. The court of appeals decision threatens to impose a lesser procedural standard for this religious freedom case than is applied by this Court to other cases of agency discretion to infringe constitutional liberties. The free exercise of religion demands procedural protection *at least* equal to other liberties.

The proper constitutional standards applicable to this

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[4] To the extent the Internal Revenue Service may have been forced into such a role by the decision in *Green* v. *Connally*, 330 F. Supp. 1150 (1971), *aff'd. per curiam*, 404 U.S. 997 (1971), the validity of that decision must be questioned. The district court in that case, however, did not address the issue of tax exemption for schools whose racially restrictive admissions policies are based on a sincere religious belief. *Id.* at 1169.

case are well summarized in the legislative history of the Ashbrook Amendment, Pub. L. No. 96-74, § 103, 93 Stat. 559 (1979). This amendment specifically addressed an attempt by the Internal Revenue Service to control racial policies of private schools by regulating their tax exempt status. The legislative history persuasively confirms the analysis set forth herein. The House Committee Report states:

> On August 22, 1978 and on February 9, 1979, the Internal Revenue Service issued proposed revenue procedure relating to the tax exempt status of private schools. At present the legislative oversight committees of both the House and Senate are considering these proposals. This Committee, too, is concerned about the Internal Revenue Service issuing revenue procedures in an area where legislation may be more appropriate. The responsibility of the Internal Revenue Service is to enforce the tax laws. The purpose of the Internal Revenue Service revenue procedures ought to be to clarify these laws, not to expand them. The issue of tax exempt status of private schools is a matter of far reaching social significance and the Service ought to issue revenue procedures in this area only when the legislative intent is fairly explicit. The Appropriations Committee is unsure that the proposed revenue procedures issued by the Service are the proper expression of that legislative intent. The Committee believes that the Service ought not issue these revenue procedures until the appropriate legislative committees have had a chance to evaluate them and make the determination that the proposed revenue procedures are a proper expression of the tax laws.

H. R. Rep. No. 248, 96th Cong., 1st Sess. 14-15, (1979).

Congressman Ashbrook, the sponsor of the Amendment, stated:

> For the administrative branch to create such a policy without direction from Congress is a violation of the doctrine of the separation of powers.
>
> * * * *

> So long as the Congress has not acted to set forth a national policy respecting denial of tax exemptions to private schools, it is improper for the IRS or any other branch of the Federal Government to seek denial of tax-exempt status. . . .
>
> Such policy determinations, when made without the action of Congress, become dangerous encroachments upon congressional authority. *Although the Tax Code has often been termed to be an instrument of social policy, it properly becomes such only upon action or lack of action by the Congress.*

Cong. Record, 96th Cong., 1st Sess. H5879-80 (daily edition, July 13, 1979) (emphasis added).

Thus, the denial of tax exempt status by the Internal Revenue Service constitutes administrative action in an area of constitutional rights in which the Congress, not the agency, has the power and the duty to act. Furthermore, the Congress has demonstrated on record an intention to act to resolve the conflict through the legislative process. In these circumstances, to uphold the action of the Internal Revenue Service would be to authorize a breach of the principle of the separation of powers.

CONCLUSION

For the protection of religious liberty from both the substantive and the procedural threats posed by the decision below, amicus respectfully requests this Court to reverse the decision of the court of appeals.

Respectfully submitted,

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V.

UNITED STATES OF AMERICA,
Respondent

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

and

BRIEF OF CONGRESSMAN TRENT LOTT AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

I.

Representative Trent Lott hereby respectfully moves for leave to file the attached brief Amicus Curiae in this case. The consent of the attorney for the Respondent has been obtained, and a copy of his letter of consent is submitted herewith. The Solicitor General, on behalf of the United States, has refused to provide a letter of consent because of a general policy of not consentng to the filing of such briefs by members of Congress.

II.

The interest of Amicus in this matter is twofold: first, in furtherance of his own interest as a United States Representative, in seeing that the Executive Branch is not permitted to depart from the law as laid down by Congress; second, on behalf of his constituents who are actively engaged in enterprises, the tax exempt status of which would be threatened by an adverse decision in this case. In his own behalf, Amicus has voted on several occasions for the Ashbrook Amendment to successive Treasury appropriations, as is explained more fully in the brief submitted herewith. While the action of the Internal Revenue Service in this case does not explicitly conflict with that Amendment, it does conflict with the terms of 26 U.S.C. 501 (c) (3) and demonstrates the Service's disdain for later Congressional expressions regarding the import of that section. On behalf of his constituents, Amicus would show that there are many religious schools in his district which are threatened by the Service with loss of their tax exempt status pursuant to Court order in *Green v. Regan*, No. 1355-69 (D.D.C.), in which none of them were made

parties. Those constituents have been denied the right of intervention in that case and have requested Amicus to make all possible efforts on their behalf to make their position on the issues herein known to this Court and to all other authorities.

III.

Neither of the parties in this case can adequately present the issues of concern to Amicus. The Solicitor General disputes Amicus's interpretation of the law. Bob Jones University neither comes under the threat of *Green v. Regan* nor the protection of the Ashbrook Amendment, and therefore has no need to present those issues to the Court in detail.

Respectfully submitted this, the_____day of November, 1981.

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TRENT LOTT, Pro Se

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Introduction

That Bob Jones University is an educational and religious institution is uncontested in this case. The district court found that the University "is dedicated to the teaching and propagation of its religious beliefs," and a "primary fundamentalist conviction of the [University] is that the Scriptures forbid interracial dating and marriage." Bob Jones University v. United States, 468 F.Supp. 890, 894 (D.S.C. 1978). The Fourth Circuit accepted the lower court's findings: Bob Jones University "is a religious institution in its own right, as well as an educational one." Bob Jones University v. United States, 639 F.2d. 147, 149 (4th Cir. 1980).

Section 501 (c) (3) of the Internal Revenue Code, 26 U.S.C. 501 (c) (3), lists types of organizations exempted from taxation:

> (3) Corporations, and any community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals.

Prior to 1970, the Internal Revenue Service interpreted that provision literally and exempted all organizations meeting any one of the Congressional critieria. The IRS regulation lists the statutory exemptions and provides that as "*each* of the purposes . . . is an *exempt purpose in itself,* an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes." 26 C.F.R. 1.501 (c) (3)-1 (d) (1) (iii) (1980) (emphasis added). The purposes are "religious,

charitable, scientific, testing for public safety, literary, educational, or prevention of cruelty to children or animals." 26 C.F.R. 1.501 (c) (3)-1 (d) (1) (i) (1980). As either a religious or educational institution, then, the University was exempted from taxation.

Until very recently Section 501 (c) (3) was interpreted to mean what it plainly stated; he IRS regulations repeated this plain meaning. Early IRS rulings also interpreted literally an earlier version of the statute:

> It seems obvious that the intent (of Congress) must have been to use the word "charitable" . . . in its more restricted and common meaning and not to include either religious, scientific, literary, educational, civic, or social welfare organizations. Otherwise, the word "charitable" would have been used by itself as an all-inclusive term, for in its broadest sense it includes all of the specific purposes enumerated. That the word "charitable" was used in a restricted sense is also shown from its position in the section. The language is "religious, charitable, scientific, literary, or educational."

I.T. 1800, II-2 C.B. 151, 152 (1923). The controversy in *Green* v. *Connally*, 330 F. Supp. 1150 (D.D.C. 1971),[1] however, led the IRS to reconsider its statutory interpretation.

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[1]The decision of the three-judge district court was affirmed in *Coit v. Green*, 404 U.S. (1971) (per curiam). Nevertheless, in a later decision the Court noted that *Coit* had no precedential value because no adversarial controversy remained when the case reached the Court. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 740 n. 11 (1974).

The *Green* case involved a lawsuit by black parents of Mississippi public school children to enjoin Treasury officials from according tax-exempt status and deductibility of contributions to Mississippi private schools which practice racial discrimination. Circuit Judge Leventhal, writing for a three-judge district court, granted the injunction against all Mississippi private schools. The IRS was ordered to revoke tax exemptions of all schools unable to show nondiscrimination in the manner established by the court. 330 F. Supp. at 1179-80.

The IRS did not wait for the culmination of the litigation but adopted the plaintiffs' position. In Revenue Ruling 71-447, 2 C.B. 230 (1971), the Service concluded that "a school not having a racially nondiscriminatory policy as to students is not 'charitable' within the common law concepts reflected in sections 170 and 501 (c) (3) of the Code and in other relevant Federal statutes and accordingly does not qualify as an organization exempt from Federal income tax." *Id.* at 231. Revenue Procedure 75-50, 1975-2 C.B. 587, incorporated this ruling and set forth requirements which private schools must meet to prove nondiscrimination and thereby regain their tax exemptions.[2] These requirements were taken from the *Green* opinion.

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[2]The Revenue Procedure is too long and detailed to quote here. Basically, it specifies the manner in which a private school must publicize its nondiscriminatory policies, and requires each school to keep records showing the racial composition, examples of advertising, and documentation of nondiscrimination in financial aid awards.

The *Green* holding is not directly relevant to this case: it applied only to *Mississippi private*—not religious—schools, and recently in *Wright v. Miller,* 480 F. Supp. 790 (D.D.C. 1979), the district court refused to extend the *Green* holding nationwide.[3] The IRS has made *Green* a part of the present case because its justification for the revocation of Bob Jones University's tax exemption rests on *Green.*

Despite the limited holding in *Green,* the Service proceeded to promulgate new exemptions standards. Again, Revenue Procedure 75-50 extended *Green* to private schools nationwide. Proposed Revenue Procedure 4830-01, 43 Fed. Reg. 37,296 (1978), extended the presumption of discrimination and consequent loss of tax-exempt status to private *religious* schools.

At this point, Congress reacted surely and swiftly to block implementation of the latest chapter of tax law according to the Service. The Ashbrook Amendment to the Treasury Appropriations, P.L. 96-74, 93 Stat. 559, 103 (1979), denies federal funds for the implementation of any regulation denying tax exemptions to private schools unless the regulation was effective before August 22, 1978. This Amendment and its relevance to this case will be discussed in full but it is sufficient to note here that

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[3]As will be discussed below, the District Court the next year ordered more stringent requirements applied to Mississippi alone. Thereafter, the Court of Appeals reversed the *Wright* decision and instructed the District Court to reconsider its position. *Wright v. Regan,* No. 80-1124 (D.C. Cir. June 18, 1981), *cert. pet'n filed,* No. 81-757 (Oct. 20 1981). The Court Appeals held that plaintiffs had standing and that a court could fashion a remedy. The Court, however, did not order any specific relief.

this Congressional declaration was virtually ignored in the Fourth Circuit's decision in *Bob Jones University.*

The Ashbrook Amendment led to a reopening of the Mississippi litgation, now known as Green v. Regan, No. 1355-69 (D.D.C.). Two orders were issued by the District Court in 1980 requiring the IRS to apply the essentials of its 1978 proposals to Mississippi schools. The IRS failed to appeal the order, but Congress has begun to take action to block its enforcement. On July 30, 1981, the House amended the Ashbrook Amendment by a vote of 337 to 83 to block the use of funds to enforce any "court order" applying rules not in effect prior to August 22, 1978. 127 *Cong. Rec.* H5392-98 (daily ed. July 30, 1981). The Senate Appropriations Committee has adopted the same language, *S Rep. No.* 97-192, 97th Cong. 1st Sess. 66 (1981), and the bill is presently awaiting action in the Senate. If enacted, it will create an unprecedented constitutional clash as the Legislative Branch denies funds to the Executive Brance to carry out activities ordered by the Judicial Branch.

There are still several ways in which this clash can be averted. The District Court has now permitted a Mississippi church school for the first time to intervene in the case to protect its own interests. The District Court may yet be persuaded on any of several grounds to set its order aside. This Court may act to avert the conflict by its decision in this case. While the revocation of the University's exemption antedates the Ashbrook Amendment and is not controlled by it, this Court should be aware of the serious consequences of a decision upholding the Service's view of the statute. The Court can avoid those consequences by applying in this case the simple and traditional rules of statutory construction which will lead to a fair reading of the law and, incidentally, to relief for the schools and schoolchildren of Mississippi.

SUMMARY OF ARGUMENT

When a Congresional enactment is clear and unambiguous on its face, it should be enforced by the courts according to its specific terms. *St. Martin Evangelical Lutheran Church v. South Dakota*, 101 S.Ct. 2142 (1981). There is no need to resort to legislative history in such a case. Here, the statute plainly exempts from taxation any institution "organized and operated exclusively for religious, charitable, . . . or educational purposes". 26 U.S.C. 501 (c) (3). Internal Revenue Service regulations which are still in force provide that "each of the purposes . . . is an exempt purpose in itself," 26 C.F.R. 1.501 (c) (3)-1 (d) (1) (iii), and long-standing regulations are entitled to great weight in judicial constructions. Neither the statute nor the regulations place any qualifications or restriction on the absolute exemption granted by the statute.

The more recent IRS policy embodied in Revenue Procedure 75-50 is not entitled to judicial deference. It conflicts with established regulations, and it results, not from an independent examination by the IRS, but from an unreviewed decision by a lower court. When the IRS attempted to embody its new policy in regulations, Congress acted affirmatively to block the use of funds to continue that process. This action is not conclusive evidence of the intent of the Congress which enacted the statute but it does indicate that Congress has no faith in the ability of the IRS to interpret this statute. The IRS deserves no more deference from this Court.

Whenever Congress intends to impose burdens upon a religious organization, it ought to say so in plain and unambiguous terms. *NLRB v. Catholic Bishop*, 440 U.S. 490 (1979). The courts will not lightly assume that Congress intended to alter the traditional status of religious institutions. In this

instance, it is quite plain that Congress intended to relieve all religious organizations, without exception, from the burden of taxation.

The Court of Appeals erred in implying an exception to the plain language of this statute on the grounds of public policy. Most public policy exceptions in the field of tax law have come in the area of business deductions. A deduction is disallowed on such grounds only when its allowance "would frustrate sharply defined national or state policies proscribing particular types of conduct." *Commissioner v. Heininger,* 320 U.S. 467, 473 (1943). The Court of Appeals was unable to cite any explicit federal enactment which would be frustrated or even hampered by the allowance of the exemption in this case. While racial discrimination by private parties has been prohibited in many cases, it has not been banned altogether. Indeed, it is even permissible for the government to discriminate in some cases. *Regents of the University of California v. Bakke,* 438 U.S. 265 (1978). Thus, there is no "sharply defined" public policy that could limit the explicit words of the statute.

ARGUMENT

I. The statute is plain and unambiguous on its face, and it is therefore impermissible to resort to legislative history to amplify its terms.

This principle was most recently articulated in *St. Martin Evangelical Lutheran Church v. South Dakota,* 101 S. Ct. 2142 (1981). The Secretary of Labor had determined that a recent amendment to the Federal Unemployment Tax Act rendered nonprofit church schools subject to the tax. The Court refused to follow the Secretary's interpretation, even though the legislative history was ambiguous. Such indefinite

Congressional expressions "cannot negate plain statutory language and cannot work a repeal or amendment by implication." *Id.* at 2151. Justice Stevens was even more explicit in his concurring opinion:

> When the Court is confronted with the task of construing legislation of this character, there is special force to the rule that the plain statutory language should control and that resort to legislative history is appropriate only when the statute itself is ambiguous.

Id. at 2153.

It challenges the imagination to ponder how Congress could have legislated any less ambiguously than 501 (c) (3), and the Court cannot assume that Congress failed to say what it intended. Moreover, the Court is not at liberty to add to or alter the words of the statute "to effect a purpose which does not appear on the face of the statute." *Hanover Bank v. Commissioner,* 369 U.S. 672, 687 (1962) (Court refused to close a tax loophole). Even the Fourth Circuit heretofore adhered to these principles; that court held that it is not permissible to " 'surmise . . . what the Legislature intended and to assume that it was only by inadvertence that it failed to state something other than what it plainly stated.' " *United States v. Deluxe Cleaners and Launary, Inc.,* 511 F.2d 926, 929 (4th Cir. 1975) (quoting *Vroon v. Templin,* 278 F.2nd 345, 348-49 (4th Cir. 1960). *Accord, National Life and Accident Insurance Co. v. United States,* 524 F.2d 559, 560 (6th Cir. 1975) ("it is [the] function [of the courts and the Commissioner] to give the natural and plain meaning effect to statutes as passed by Congress.").

There are occasions when a departure from the statute's literal meaning is indicated by the statute itself or where it is necessary to effect the legislative purpose. *Malat v. Riddell,* 383 U.S. 569, 571-72 (1966).

The Fourth Circuit in *Bob Jones University* held that this was such an occasion. In support of its statutory construction, the court cited a portion of a committee report which accompanied the Revenue Bill of 1938:

> The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare.

H.R. No. 1860, 75th Cong., 3d Sess. 19 (1938). The court concluded that an organization practicing racial discrimination cannot promote the general welfare and therefore, tax exemption should not be allowed. The sentence following the quoted language states that the United States "derives no such benefit from gifts to foreign institutions." The entire paragraph concerns only the Code's limit of deductibility to contributions made to domestic institutions. This Committee report neither implies nor states that the Code should not be construed literally. Furthermore, none of the 1938 legislative history contains even a subtle implication that the IRS should depart from a Code provision's literal meaning. It is crystal clear that the Committee was merely describing the purpose behind the statute; it was not delegating to the IRS the authority to make independent *ad hoc* determinations of whether an organization exempted by the statute in fact serves the general welfare.

Congress intended that Section 501 (c) (3) of the Internal Revenue Code would be interpreted to mean what it states. The Court has "no power to change deliberate choices of legislative policy that Congress had made within its constitutional powers. Where

congressional intent is discernible—and here it seems crystal clear—we must give effect to that intent." *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195, 215 (1962). Congress deliberately chose to exempt from taxation *all* religious organizations regardless of their beliefs, a choice within the Congress's constitutional powers. The Court therefore is compelled to effectuate this policy decision.

The Court of Appeals rejected the statute's unambiguous meaning in favor of a strained interpretation "which renders one part a mere redundancy." *Jarecki v. G. D. Searle & Co.*, 367 U.S. 303, 307 (1961). There the Court construed an *ambiguous* statute to effectuate all provisions. In Section 501 (c) (3), Congress listed "charitable" as one type of tax-exempt organization among seven others. If all organizations must be charitable, the inclusion of "charitable" is unnecessary. The Fourth Circuit here ignored clear provisions and construed the statute to render this provision merely repetitive.

The statutory interpretation urged on this Court cannot stand without an absurd result. If all organizations must be "charitable," then all must qualify as "religious," "educational," "scientific," and "for the prevention of cruelty to animals." Surely no reasonable person believes that Congress intended this result; that is why "or"—not "and"—was used in the statute. An organization which serves only one of the enumerated purposes is entitled to a tax exemption. That Bob Jones University is a religious and educational organization under Section 501 (c) (3) is uncontested.[4] Therefore, the lower court's holding must be reversed.

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[4]See p. 1 *supra*.

II. The conclusion of the Internal Revenue Service is not entitled to deference because it is inconsistent with earlier practice and has led to adverse Congressional action.

Until 1971, the IRS construed the statute literally;[5] but 501 (c) (3) was not amended to change the longstanding interpretation. The IRS itself initiated the policy at issue in the process of litigating *Green v. Connally,* an unreviewed court decision[6] which was, in any event, expressly limited to Mississippi schools.

In Revenue Ruling 71-447 the IRS ruled for the first time, "A private school that does not have a racially nondiscriminatory policy as to students does not qualify for exemption." 2 C.B. 230 (1971). Four years later, this position was incorporated in Revenue Procedure 75-50, 1975-2 C.B. 587. This is the expert determination to which the IRS suggests this Court should defer.

Only last Term, this Court stated the proper standard of skepticism to be applied to agency action in such a case. "The amount of deference due an administrative agency's interpretation of a statute, however, 'will depend on the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.' *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944)." *St. Martin Evangelical Lutheran Church,* 101 S.Ct. at 2148-49, n.13. The IRS position in this matter cannot pass such a test.

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[5]The IRS has not even amended its own regulations to accord with is new interpretation. Pp. (1-2) *supra.*

[6]See note 1 *supra.*

In the first place, the position is inconsistent with IRS regulations in effect even today. The IRS argues that any organization must qualify as a charity under the common law to obtain the exemption. However, regulations still provide that "each of the purposes specified . . . is an exempt purpose in itself." An organization need not be educational *and* charitable or religious *and* charitable. Under the regulation or the statute, it is sufficient to be one or the other.

The implication by the IRS of an exemption based upon public policy, as will be argued in Point IV below, is completely inconsistent with the case law. Earlier cases involve criminal or prohibited acts, but the IRS itself believed that "the operation of private schools on a discriminatory basis is not prohibited by Federal statutory law." Its action therefore partakes of an arbitrary imposition of will, rather than a considered analysis of the law.

The circumstances surrounding the formulation of the policy hardly display "thoroughness . . . in its consideration." It emerged, not in the context of a dispassionate review by IRS officials, but as an attempt to assuage plaintiffs in ongoing litigation. As a result, no controversy remained when the case finally reached this Court. See *Bob Jones University v. Simon*, 416 U.S. 725, 740 n.11 (1974). Certainly, had this Court been able to reach the merits of the original case the Service's litigating ploy would have carried little weight against an interested taxpayer. Here we have such a party that has been trying ever since to present this issue to this Court for review. The University is entitled to have the statute construed on its own merits without undue reference to an agency interpretation based upon a single unreviewed decision of a lower court.

Finally, the IRS did not even pay lip service to the intent of the Congress which passed this statute. Had

there been a single word in the legislative history to support the new construction, surely it would have been brought forward. It was not, because no such evidence exists. The IRS mentioned in passing other civil rights laws passed by other Congresses, but those shed no light on the original Congressional intent. To the extent they are at all relevant, they pale into insignificance beside another Congressional action related directly to this problem.

The attachment of the Ashbrook Amendment to successive Treasury appropriations demonstrates Congress's complete lack of confidence in the Service's action in this area.[7] The Amendment bars the use of funds to deny tax-exempt status to any school on the basis of any rule not in effect prior to August 22, 1978. This provision does not bar this proceeding against the University because it is based upon Revenue Procedure 75-50, which had been in effect for three years before the passage of the Amendment.

It would be a mistake, however, to think that Congress has somehow given its approval to all IRS procedures in effect before August 22, 1978. It cannot be said with certainty from the face of the Amendment whether Congress was satisfied with Revenue Procedure 75-50 or would have preferred that the IRS return to some earlier practice, perhaps the

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[7] "Sec. 103. None of the funds made available pursuant to the provisions of this Act shall be used to formulate or carry out any rule, policy, procedure, guideline, regulation, standard, or measure which would cause the loss of tax-exempt status to private, religious, or church-operated schools under section 501 (c) (3) of the Internal Revenue Code of 1954 unless in effect prior to August 22, 1978." Ashbrook Amendment to the Treasury Appropriations, P.L. 96-74, 93 Stat. 559, 103 (1979).

one embodied in the regulations that are even now in effect. The only conclusion that is irrefutable is that congress did not trust the IRS to change those procedures further. The Congress has in effect taken the further development of the law completely out of the hands of the IRS. There is no reason that this Court should have any more confidence in the Service's ability to construe this statute than does the Congress. An agency that has drawn such an unprecedented rebuke from Congress is hardly entitled to deference here. This Court should therefore construe the statute on its face, without reference to the unsupported opinion of an agency whose competence in this field has been thoroughly discredited.

III. A court may not conclude that Congress intended to place a burden upon religious institutions unless it has done so in plain and unambiguous terms.

To hold that this religious institution is subject to tax because of its interracial dating policies would clearly raise grave First Amendment questions. This Court has repeatedly construed statutes whenever possible to avoid such questions. The Court has recently made clear that whenever a burden is to be placed upon a religious institution, " 'the affirmative intention of the Congress clearly expressed' " must be apparent. *NLRB v. Catholic Bishop*, 440 U.S. 490, 501 (1979), *quoting Benz v. Compania Naviera Hidalgo*, 353 U.S. 138, 147 (1957).

In the *Catholic Bishop* case, with no express Congressional authorization, the National Labor Relations Board distinguised between "completely religious" organizations and those "merely religiously associated" and claimed jurisdiction over the latter. *Id.*, at 459. The Board's distinction provided no

workable guide, and the Court held it not entitled to exercise such unbridled discretion in the absence of a Congressional mandate. The Court denied the Board jurisdiction over any religious institution.[8]

It is important to note that the Court so held on the basis that there was no evidence that Congress had ever considered the problems posed by religious institutions. *Id.*, at 504. The absence of such consideration was sufficient to leave such institutions uncovered. In this case, if Congress had merely referred to "charitable" organizations without reference to religion, *Catholic Bishop* might still lead to the conclusion that religious institutions should be deemed exempt. Here, however, Congress explicitly considered religious institutions, and explicitly provided that they should be exempt. Had Congress intended there to be any exception to that explicit provision, it could certainly have said so.

A contrary ruling would dangerously expand the authority of the IRS to interfere in church affairs. The decision of the Court of Appeals certainly tends in that direction. *Cf. United States v. Rutherford,* 442 U.S. 544, 557 (1979) (the reasoning behind the lower

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[8] *McCulloch v. Sociedad Nacional,* 372 U.S. 10 (1963), presents an analogous circumstance. The NLRB asserted jurisdiction over ships owned by foreign subsidiaries of American companies. Each ship flew under a foreign flag with foreign crew and maintained other contacts with the nation of its flag. The Court held that the Board had no jurisdiction in the absence of an affirmative Congressional expression. Foreign relations, like religion, is a "delicate field" and only Congress could make such a policy decision. *Id.* at 22-23.

court's statutory interpretation "cannot be so readily confined."). Racial discrimination is not the only area where public policy might come into contact with religion. The IRS might next decide to deny exemptions to churches that refuse to ordain women, just as the Church of Jesus Christ, Latter Day Saints, once denied the priesthood to blacks. In either case, the imposition of a tax should be based upon clear Congressional intent and not the whim of IRS officials.

IV. There is no basis for implying a public policy exception to the plain and unambiguous language of the statute.

Concededly, certain precedent supports the proposition that tax deductions and, by analogy, exemptions, which violate public policy will be denied. This is a narrow exception: "the mere fact that an expenditure bears a remote relation to an illegal act does not make it nondeductible." *Commissioner v. Heininger,* 320 U.S. 467, 474 (1943). The *Heininger* Court allowed the taxpayer to deduct as business expenses attorney fees incurred in defending a business-related criminal prosecution. The government admitted that the tax laws' purpose was not to penalize illegal business. Nevertheless, the government now advocates penalizing Bob Jones University for its uncontestedly genuine religious beliefs.

A trucking company's speeding ticket expenses were held nondeductible as business expenses in *Tank Truck Rentals v. Commissioner,* 356 U.S. 30 (1958). The "frustration of state policy" was "most complete and direct" because "the expenditure for which deduction is sought is itself prohibited by statute." *Id.,* at 35. The Court expanded this test of nondeductibility in *Commissioner v. Tellier,* 383 U.S.

687, 694 (1966). *When Congress has been silent,* a type of deduction typically allowed will be denied

> [o]nly where the allowance . . . would "frustrate sharply defined national or state policies proscribing particular types of conduct" . . . *Commissioner v. Heininger,* 320 U.S., at 473. Further, the "policies frustrated must be national or state policies evidenced by some *governmental* declaration of them." *Lilly v. Commissioner,* 343 U.S. [90] at 97 [(1952)]. (Emphasis added by Court.) Finally, the "test of nondeductibility always is the severity and immediacy of the frustration resulting from allowance of the deduction." *Tank Truck Rentals v. Commissioner, 356 U.S. 30, 35.*

Tellier, 383 U.S. at 694 (legal expenses incurred in unsuccessful criminal defense deductible; the crime was related to taxpayer's business).

There is a general policy against most forms of racial discrimination, but this exemption does not work a complete and direct frustration of any such sharply defined and governmentally declared state or federal policy.

First, "[t]he grant of a tax exemption is not sponsorship since the government does not transfer part of its revenue to churches but simply abstains from demanding that the church support the state." *Walz v. Tax Commission,* 397 U.S. 664, 675 (1970). Moreover, the nexus in *Tank Truck Rentals* between the deduction and the illegality was much tighter than is the case here. In *Tank Truck Rentals,* the deduction was really a direct benefit from the illegality; in the absence of the crime, there would have been no expense to deduct. Bob Jones University, on the other hand, does not enjoy its exemption because of its

racial policies, but because it is an educational and religious organization.

Moreover, racial discrimination does not always violate public policy. Schools are allowed to practice racial discrimination in admissions in the interest of diversity. *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). An institution's right to pursue diversity is not constitutionally protected, but its right to practice its religion is protected by the First Amendment. If racial discrimination in the interest of diversity does not violate public policy, then surely discrimination in the practice of religion is no violation.

The difficulties in ascertaining "public policy" when no illegal act is involved led the Court to limit the *Tank Truck Rentals* public policy exception to situations where the tax benefit directly results from an illegal act. *Heininger, supra*, at 474. No formulation of "public policy" can accomodate the holdings of the court below and *Moose Lodge v. Irvis*, 407 U.S. 163 (1972). Neither Moose Lodge's nor Bob Jones University's discriminatory practices are illegal in themselves.[9] Only is the government supports the

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[9]But see *Runyon v. McCrary*, 427 U.S. 160 (1976). It remains unclear whether 42 U.S.C. s 1981 prohibits racial discrimination by religious schools, as demonstrated by the welter of opinions in *Brown v. Dade Christian Schools*, 556 F.2d 310 (5th Cir. 1977), *cert. denied*, 434 U.S. 1063 (1978). It should be remembered that at the time the IRS formulated its policy, it was under the opinion that racial discrimination by religious schools and all private schools was perfectly legal. Rev. Rul. 71-447, 2 C.B. 230 (1971).

discrimination is it illegal, but *Walz* held that a tax exemption does not constitute support of the exempt organization. Of course, the state action doctrine and public policy concepts are not synonymous. Nevertheless, if the state's discretionary granting of a qualified privilege to a segregated club does not offend the laws or the Constitution, on what grounds can it be said that the general grant of a tax exemption to religious and educational institutions—one of which happens to forbid interracial dating as part of its sincere religious belief—violates public policy?

This indicates that there are no real standards which the IRS can apply to determine which otherwise tax-exempt organizations violate public policy. To imply some sort of undefined public policy exception to Section 501 (c) (3) would provide the IRS with an inherently destructive weapon—the power to tax. Any exempt organization violating the Service's notion of public policy will be taxed, and the organization will be forced to litigate a definitive explication of public policy.

Ad hoc determinations by unelected bureaucrats in matters as fundamental to our governmental structure as the First Amendment separation of church and state violate all principles of our representative democracy. It is up to the Congress—the elected representatives of the people—to formulate public policy and to determine whom to tax. The role of the IRS is simply to collect taxes from those Congress has subjected to the burden of taxation. This Court cannot allow the IRS so blatantly to usurp Congressional prerogatives.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals for the Fourth Circuit must be reversed.

Respectfully submitted,

REPRESENTATIVE
TRENT LOTT
Pro Se

CERTIFICATE

I, the undersigned, proceeding *pro se*, do hereby certify that I have this day mailed a true and correct copy of the foregoing Brief of Representative Trent Lott Amicus Curiae to the following:

The Honorable Rex Lee
Solicitor General
United States Department of Justice
Washington, D.C. 20530

William Bentley Ball, Esquire
Ball & Skelly
511 North Second Street
P.O. Box 1108
Harrisburg, Pennsylvania 17108

So certified this_____day of November, 1981.

_____
TRENT LOTT

Amicus Brief

4

Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

No. 81-3

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1981

BOB JONES UNIVERSITY,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

Brief of
NATIONAL ASSOCIATION OF EVANGELICALS
As Amicus Curiae
in Support of Petitioner.

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UNITED STATES OF AMERICA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Brief of NATIONAL ASSOCIATION OF EVANGELICALS As Amicus Curiae in Support of Petitioner.

The National Association of Evangelicals, with the consent of the parties, submits this brief as amicus curiae in support of Petitioner. The parties have consented to the filing of this brief and their letters of consent have been filed with the clerk pursuant to Rule 36.2.

INTEREST OF AMICUS CURIAE

The National Association of Evangelicals ("NAE") is a nonprofit religious corporation exempt under §501(c)(3) of the Internal Revenue Code. NAE is an association of state and local evangelical organizations, colleges, and universities and some 36,000 churches from 74 denominations. NAE serves a constituency of 10-15 million people through its commissions and affiliates. These affiliates include the National Religious Broadcasters, the World Relief Corporation, and the Evangelical Foreign Missions Association. Because of its separatist character and strict theological views, Bob Jones University would consider the limited doctrinal tenets of NAE too "liberal" and thus is not a member or affiliate of NAE.

Evangelicals can and do differ with one another in the interpretation of Scripture. (Most evangelicals would not agree with the view of Bob Jones University that interracial dating and marriage is contrary to Scripture.) But they are united in their affirmation of the truth and inspiration of the Bible, as well as

the Lordship and Diety of Jesus Christ.

The ominous threat to religious freedom posed by the decision of the court below compels us to submit this brief. No case has gone to such extremes in applying the public policy against racial discrimination. Until this case that public policy had been applied only in situations of invidious discrimination, that is, when at least some element of personal bias or prejudice was present.

Bob Jones University believes that the Bible forbids interracial marriage. In order to enforce this religious view, the University barred admission of black students prior to September, 1971. After that date married black students were admitted, and since May, 1975, a completely open admissions policy has been in effect. The earlier policy excluding all or most blacks was followed as the easiest and most reliable way to protect its religious conviction against interracial dating and marriage. Restrictions designed to enforce this view continue to exist; discipline is applied with an even hand.

The court below has ignored crucial factual differences in the cases it relies upon, such as the total exclusion of blacks from educational institutions. In so doing, it erroneously applies a public policy intended to rid this nation of invidious racial discrimination to a University which admits blacks, but follows a policy with respect to interracial dating and marriage based not on personal bias or prejudice, but sincere religious belief.

NAE is familiar with the University and its strict theological views, including its religiously based nonmiscegenation belief. We would not submit this brief on behalf of the University if we had reason to believe that its professed religious beliefs were being used to mask invidious racial discrimination. In its 1964 Resolutions, NAE addressed "the problem of race prejudice" and called "upon our churches to accelerate the desegregation of their own institutions both in spirit and in practice and the opening of the doors of all sanctuaries of worship to every person, regardless of race or national origin."

The basis for our concern is reflected in the dissenting opinion of Judge Widener, in which he states (639 F.2d at 156): "Accepting the foregoing findings of the district court as correct, and even the majority does not claim they are clearly erroneous, and the previous findings of this court and the Supreme Court, as we must, that Bob Jones University is a religious organization, we are dealing in this case not with the right of the government to interfere in the internal affairs of a school operated by a church, but with the internal affairs of the church itself. There is no difference in this case between the government's right to take away Bob Jones' tax exemption and the government's right to take away the tax exemption of a church which has a rule of its internal doctrine or discipline based on race, although that church may not operate a school at all."

We are also deeply disturbed at the precedential potential of the lower court's decision with respect to the Government's use of other clearly defined public policies, such as the policy against sex discrimination, as the basis

for withdrawing tax exemption. What the Government might view as a violation of the public policy against sex discrimination, evangelicals would consider faithful adherence to Scriptual teaching with respect to the proper roles of women within the church. For example, many evangelical churches do not believe in the ordination of women as pastors or elders. Left intact, the decision of the court below will inevitably be used to justify subordination of religious belief to current notions of public policy, and the compass of §503(c)(3) of the Internal Revenue Code will be merely a function of an ever changing public policy continuum.

STATEMENT OF THE CASE

Bob Jones University has sued the United States for a refund of $21 in FUTA taxes it paid for calendar year 1975. The Government has counterclaimed for approximately $490,000 in unemployment taxes, plus interest, which it asserts are due on returns filed by the University for the years 1971 through 1975.

At issue is revocation by the IRS of

the University's exemption as an organization described in §503(c)(3) of the Internal Revenue Code. IRS contends that §503(c)(3) only exempts organizations which are "charitable" in character; that whether the University is religious in purpose and character is irrelevant; that an organization which violates the public policy against racial discrimination cannot be considered "charitable"; and that the University's policy against interracial dating and marriage--though it concedes this policy is based on sincere religious belief--violates federal public policy.

The District Court found the University to be a religious organization and therefore the Government's procedure for denying tax exempt status to educational organizations engaging in racial discrimination was inapplicable to it. The District Court also held that the revocation of the University's tax exemption violated its rights under the Free Exercise Clause.

The Court of Appeals, Judge Widener dissenting, reversed. Its decision rests on four pillars:

1. The University is subject to IRS revenue rulings and procedures prohibiting racial discrimination in private schools because it is an educational institution as well as a religious one. 639 F.2d at 149.

2. The University is not a "charitable" organization because enforcement of its rules relating to interracial dating and marriage violates the government policy against subsidizing racial discrimination in education, public or private. Id. at 151.

3. Assuming the revocation of the University's tax exemption impinges upon its Free Exercise rights, the government's interest in eliminating all forms of racial discrimination in education is compelling. Id. at 153.

4. The principle of Government neutrality toward religion embodied in the Establishment Clause does not prevent governmental action based upon the compelling state interest in the enforcement of the public policy against racial discrimination. And it found that since the only inquiry which the Government would make of the University would be whether the institution maintains racially neu-

tral policies, no excessive entanglements would be created. Id. at 154-155.

THE QUESTIONS TO WHICH THIS BRIEF IS ADDRESSED

Whether the public policy against invidious racial discrimination, weighed in the balance with the Free Exercise Clause, constitutes a compelling state interest sufficient to justify revoking the tax exemption of a religious-educational organization which has an open admissions policy but enforces religiously based rules against interracial dating and marriage.

Whether the Tank Truck Rentals public policy doctrine is applicable where a school's rules against interracial dating and marriage are based on sincere religious belief.

SUMMARY OF ARGUMENT

The "balancing" process employed by the court below in weighing public policy with respect to invidious racial discrimination against the Free Exercise rights

of the University presents a startling and unprecedented departure from the teaching of this Court in such cases as Wisconsin v. Yoder, 406 U.S. 205 (1972); Sherbert v. Verner, 374 U.S. 398 (1963); and Thomas v. Review Board, 101 S. Ct. 1425 (1981). It lacks a careful assessment of the extent of the frustration of public policy against the University's rights under the Free Exercise Clause. Compare the delicate balancing in "weighing the costs to the national antitrust policies against the needs of free religious exercise" of the court in Costello Publishing Co. v. Rotelle, No. 80-2147, slip op. at 26 (D.C. Cir. Nov. 10, 1981). In short, the rationale of the court below is essentially one dimensional--it so elevates the doctrine of compelling state interest that the Free Exercise Clause is totally eclipsed.

The Court of Appeals professes to recognize that the religious belief of the University is sincere and its racial policy immutable. 639 F.2d at 148. Yet it finds a pressing need to fashion a "prophylactic rule" to prevent indirect support by Americans of a religious-educa-

tional organization that believes Scripture forbids interracial dating and marriage. The enforcement of that belief, standing alone, is apparently fatal to any claim to exemption, no matter how color blind the University may be in all other respects. (The University has an open admissions policy and there is no evidence on the record of any inequality of treatment between white students and black students.)

The "balance" the lower court has struck in this case fosters speculation that the court must have been unconvinced of the sincerity of the University's religious belief, its rhetoric notwithstanding. Perhaps the University's view of Scripture seemed far-fetched to the court below. But as this Court stated in United States v. Ballard, 322 U.S. 78, 87 (1944), the First Amendment protects adherence to religious views that "might seem incredible, if not preposterous, to most people."

The prophylactic rule of the court below appears virtually absolute, judging from the court's application of that rule

to the unique facts of this case. Under that rule, it is apparently irrelevant whether racial discrimination proceeds from the worst of motives or the best of intentions; whether from rank prejudice or from a devout desire to obey the perceived will of God.

Surely in a free society whose basic charter nourishes religious pluralism the public policy against invidious racial discrimination leaves room for the University's exercise of a belief that interracial dating and marriage contravenes Scripture. There is no pressing need here, "for the protection of society," Cantwell v. Connecticut, 310 U.S. 296, 304 (1940), to sustain the absolutist prophylactic rule announced by the Court of Appeals.

The court below also erred in its expansive interpretation of Tank Truck Rentals v. Commissioner, 356 U.S. 30 (1958). That case involved public policy as the basis for denying specific expenses directly attributable to illegal acts; it did not concern public policy as the basis for denying the complete exemption of an

organization due to a particular practice based upon sincerely held religious beliefs. Moreover, the Court of Appeals broadened the application of the Tank Truck doctrine contrary to this Court's decision in Commissioner v. Tellier, 383 U.S. 687, 693-694 (1966), which indicates that, if anything, the Tank Truck doctrine is to be confined rather than expanded.

ARGUMENT

I.

THE COURT BELOW HAS DEPARTED FROM THIS COURT'S TEACHING IN FREE EXERCISE CASES

In upholding revocation of Bob Jones University's tax exemption, the court below forces the University to choose between its rights under the Free Exercise Clause and the receipt of a government benefit otherwise available. While the freedom to act in pursuit of religious beliefs is admittedly not absolute, as is the freedom to believe, only a compelling state interest justifies an abridgement of that freedom. We submit that the court below has failed to accord certain decisions of this Court interpreting the Free Exercise Clause the weight they deserve.

In Thomas v. Review Board, 101 S. Ct. 1425, 1431 (1981),this Court once again affirmed a principle of long standing--"that a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program." (Actually, the University cannot abandon the practice of its immutable religious belief, though the court below suggests that course, without being hypocritical.) We recognize that the lower court did not have the benefit of this Court's thinking in that case, but the long established principle expounded in Thomas had bee thoroughly discussed in Sherbert v. Verner, 374 U.S. 398 (1963).

In Sherbert this Court stressed that "appellant's declared ineligibility for benefits derives solely from the practices of her religion, but the pressure upon her to forego that practice is unmistakable." Id., at 404. This Court reiterated the same principle when in Thomas v. Review Board it stated: "Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because

of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial." 101 S. Ct. at 1432.

In revoking the tax exemption of the University, the Government has put severe financial pressure on the University to modify its behavior and to violate its religious beliefs. The question thus narrows to whether the Government can "justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest." Ibid. As this Court observed in Thomas, quoting from Wisconsin v. Yoder, "'[t]he essence of all that has been said and written on the subject is that only those interests of the highest order can overbalance legitimate claims to the free exercise of religion.'" Ibid.

That the University's beliefs with respect to interracial dating and marriage are a matter of sincere religious convic-

tion is an undisputed fact on the record. It is thus beyond question that Bob Jones asserts a legitimate claim under the Free Exercise Clause. Hence the ultimate question becomes whether the public policy against invidious racial discrimination justifies revocation of the University's tax exemption.

The Court below has equated the University's sincere religious belief that Scripture forbids miscegenation with invidious racial discrimination. That is evident from the many cases relied upon by the court below which involve situations where blacks were excluded from admission to educational institutions or were otherwise the victims of racial prejudice. In support of its indiscriminate concept of racial discrimination, the Court of Appeals relies upon such Equal Protection cases as Loving v. Virginia, 388 U.S. 1 (1967)(law prohibiting interracial marriage unconstitutional) and McLaughlin v. Florida, 379 U.S. 184 (1964) (interracial cohabitation law invalid). Such racially motivated laws from a bygone white supremacy era were obviously prompted by blatant racial prejudice. We fail to see their

relevance where a University's disciplinary rule is based upon sincerely held religious beliefs.

Judge Widener states in his dissenting opinion: "This is a case of first impression so far as the Supreme Court is concerned, as well as the Courts of Appeals." 639 F.2d at 158. That is correct. As Justice Rehnquist states in his dissenting opinion in Prince Edward School Foundation v. United States, cert. denied, 101 S. Ct. 1408 n.1 (1981): "This court summarily affirmed the District Court's decision sub nom. in Coit v. Green, 404 U.S. 997 (1971), but we later explained in Bob Jones University v. Simon, 416 U.S. 725, 740, n. 11 * * * that this affirmance lacks precedential weight because no adversarial controversy remained in Green by the time the case reached the Court." Moreover, the district court in Green observed: "We are not now called upon to consider the hypothetical inquiry whether tax-exemption or tax-deduction status may be available to a religious school that practices acts of racial restriction because of the requirements of the religion." Green v. Connally, 330 F. Supp.

1150, 1169 (D.D.C. 1981). To the extent that Congress has considered the question, as Judge Widener pointedly observes, it has raised grave doubts about the validity of the public policy rationale of the court below. 639 F.2d at 160-161.

ARGUMENT

II.

THE TANK TRUCK RENTALS DOCTRINE IS INAPPLICABLE TO THIS CASE

When a school excludes blacks for racial reasons or otherwise discriminates against black students, that racial discrimination is rightly characterized as invidious and pervasive. We assume, for the sake of argument, that in such cases the doctrine of Tank Truck Rentals v. Commissioner, 356 U.S. 30 (1958) could arguably be applied on an equally pervasive basis to revoke the exemption of the offending institution. But that is plainly not the case here. There is simply no authoritative source for applying the Tank Truck Rentals public policy doctrine as the basis for revoking the exemption of a religion-based school which admits black students on an equal footing with white

students, and treats black and white students alike with respect to all its disciplinatory rules, including rules against interracial dating and marriage founded on sincere religious belief.

The guarded comments of this Court in Commissioner v. Tellier, 383 U.S. 687, 693-694 (1966), indicating that the Tank Truck Rentals doctrine should be confined rather than expanded, are ignored by the court below on the theory that Tank Truck involved a profit-making, computational situation. Therefore, as matters now stand, there are virtually no constraints on the IRS in its expansive application to the §503(c)(3) exempt organization area of Tank Truck Rentals.

The severe financial impact of the Tank Truck Rentals doctrine as applied to the unique facts of this case is only symptomatic of a greater problem. We do not relish IRS branching out in additional public policy areas such as discrimination on the basis of sex, age, or physical handicap. What, in principle, is to prevent IRS from questioning the "charitable" character of offending exempt or-

ganizations in these other public policy areas? As former Commissioner of Internal Revenue Kurtz has stated with respect to the racial discrimination issue, questions in this area are sensitive and put the IRS "on the cutting edge of developing national policy." Remarks before the PLI Seventh Biennial Conference, Jan. 9, 1978, excerpts reprinted in 127 Cong. Rec. H5396 (daily ed. July 30, 1981)(remarks of Rep. Philip Crane).

In our view, the Commissioner should not be "on the cutting edge of developing national policy." We share the concerns of Justice Blackmun expressed in his dissenting opinion in Alexander v. "American United," 416 U.S. 752, 774-775 (1974): "[W]here the philanthropic organization is concerned, there appears to be little to circumscribe the almost unfettered power of the Commissioner. This may be very well so long as one subscribes to the particular brand of social policy the Commissioner happens to be advocating at the time * * *, but application of our tax laws should not operate in so fickle a fashion. Surely, social policy in the first instance is a matter for legislative

concern." (Footnote omitted.) Similar sentiments were expressed in Runyon v. McCrary, 427 U.S. 160, 212 (1976) (Justice White, joined by Justice Rehnquist, dissenting).

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be reversed.

Respectfully submitted,

FOREST D. MONTGOMERY,

Attorney for Amicus Curiae.

November 1981

Docket Sheet

NO. 81-3-CFX (Vide: 81-1)	TITLE Bob Jones University, Petitioner v. United States

DOCKETED	COURT
July 1, 1981	United States Court of Appeals for the Fourth Circuit

DATE	PROCEEDINGS AND ORDERS
	Counsel for Petitioner: William Bentley Ball, Philip J. Murren, Richard E. Connell,
	Counsel for Respondent: Solicitor General
July 1, 1981	Petition for writ of certiorari filed. (Record filed).
July 29, 1981	Brief, amicus curiae, for General Conference Mennonite Church in support of petition filed.
July 31, 1981	Brief, amicus curiae, of National Association of Evangelicals filed.
July 31, 1981	Brief, amicus curiae, on behalf of Church of God in Christ, Mennonite, in support of petitioner filed.
Aug. 3, 1981	Brief, amicus curiae, for The Center for Law and Religious Freedom of the Christian Legal Society in support of petition filed.
Aug. 3, 1981	Brief, amicus curiae, of The National Committee for Amish Religious Freedom in support of petition filed.
Aug. 3, 1981	Brief, amici curiae, of Church of God, a/k/a Worldwide Church of God filed.
Jul. 30, 1981	Brief, amicus curiae, of The Church of Jesus Christ of Latter-Day Saints filed.
Aug. 4, 1981	Order extending time to file a response to the petition until Sept. 1, 1981.
Sept. 9, 1981	Brief for respondent filed. (See: 81-1).
Sept. 16, 1981	DISTRIBUTED. 10/9/81.
Oct. 13, 1981	Petition GRANTED. The cases are consolidated and a total of one hour is allotted for oral argument.

Nov. 25, 1981	Brief, amicus curiae, of The Center for Law and Religious Freedom of the Christian Legal Society filed.
Nov. 25, 1981	Brief, amicus curiae, of National Association of Evangelicals filed.
Nov. 25, 1981	Brief, amici curiae, of The American Baptist Churches in the USA, joined by the United Presbyterian Church in the USA filed.
Nov. 27, 1981	Motion of Trent Lott for leave to file a brief as amicus curiae filed.
	(Over)

81-3

Title

No.

DATE	PROCEEDINGS AND ORDERS
Nov. 27, 1981	Joint appendix filed.
Nov. 27, 1981	Brief for the petitioner filed.
Nov. 30, 1981	Brief, amicus curiae, of The National Jewish Commission on Law and Public Affairs (COLPA) filed. (Vide: 81-1)
Dec. 4, 1981	Motion of Goldsboro Christian Schools, Inc. for divided argument and for additional time for oral argument filed.
Dec. 4, 1981	Response of Bob Jones University filed.
Dec. 14, 1981	The motion of Goldsboro Christian Schools, Inc. for divided argument and for additional time for oral argument is DENIED. The motion of Trent Lott for leave to file a brief as amicus curiae is No. 81-3 is GRANTED.
Dec. 31, 1981	Brief, amicus curiae, for The Lawyers' Committee for Civil Rights Under Law in support of the respodent filed. (Vide: 81-1).
Jan. 5, 1982	Brief, amici curiae, of The American Civil Liberties Union and The American Jewish Committee filed. (Vide: 81-1).
Jan. 4, 1982	Order extending time to file the respondent's brief on the merits until Jan. 10, 1982.
Jan. 8, 1982	Respondent's suggestion of mootness filed. (Vide: 81-1)
Jan. 8, 1982	Memorandum for the U. S. filed. (Vide: 81-1) (D).
Jan. 12, 1982	DISTRIBUTED. 1-15. (Suggestion of mootness).
Jan. 12, 1982	Opposition by petitioner in 81-3 to respondents suggestio of mootness filed. (Also in 81-1)
Jan. 14, 1982	Response of petitioner in 81-1 to suggestion of mootness.
Jan. 15, 1982	Motion of NAACP to intervene as respondents filed, or in the alternative to participate as amici curiae. (Also in 81-1)
Jan. 9, 1982	Brief, amicus curiae, of the NAACP Legal Defense and Educational Fund, Inc. filed. (Vide: 81-1)
Jan. 18, 1982	DISTRIBUTED. 1-22. (Suggestion of mootness, and Motion of NAACP, et al. for leave to intervene or in the alternative to participate as amici curiae.
Jan. 20, 1982	Opposition filed by petitioner in 81-3 to motion of NAACP, et al., for leave to intervene or in the alternative to participate as amici curiae filed.
Jan. 22, 1982	Response of petitioner in No. 81-1 to motion of NAACP filed.
Feb. 3, 1982	Supplemental memorandum for the U. S. filed. (Vide: 81-1)
Feb. 10, 1982	Response of petitioner in No. 81-3 to motion of NAACP filed.
Feb. 10, 1982	Motion of Laurence H. Tribe, et al. for leave to file a brief as amici curiae filed. (Vide: 81-1).

(Card No. 2)

NO.	TITLE
81-3-CFX (Vide: 81-1) See: 81-1626	Bob Jones University, Petitioner v. United States

DOCKETED	COURT
July 1, 1982	United States Court of Appeals for the Fourth Circuit

DATE	PROCEEDINGS AND ORDERS
Feb. 17, 1982	Motion of Agencies of the United Church of Christ for leave to file a brief as amicus curiae filed.
Feb. 17, 1982	Motion of Lawyers' Committee for Civil Rights Under Law, et al. for leave to file a supplemental brief as amici curiae filed.
Feb. 23, 1982	DISTRIBUTED. 2-26. (Above motions, suggestion of mootness
Feb. 24, 1982	Motion of petitioner for order directing respondent to act with respect to respondents memorandum of Jan. 8, 82
Feb. 24, 1982	Opposition by petitioners in 81-1 to motion of Laurence H. Tribe, et al. filed.
Feb. 24, 1982	Opposition by petitioners in 81-1 to motion of Agencies of the United Church of Christ filed.
Feb. 25, 1982	Motion of Solicitor General for leave to file a brief out of time filed.
Feb. 25, 1982	Motion of respondent for leave to file motion for divided argument out of time, and motion for divided argument filed.
Feb. 25, 1982	DISTRIBUTED. 2-26. (Above motions).
Feb. 25, 1982	Brief for the U. S. received. (D). (Vide: 81-1).
Mar. 2, 1982	REDISTRIBUTED. 3-5. (Above motions).
Mar. 3, 1982	Motion of petitioner in 81-3 for summary reversal filed.
March 3, 1982	Motion of petitioner in 81-1 for summary reversal filed.
March 3, 1982	DISTRIBUTED. 3-5. (Above motions)
Mar. 9, 1982	Lodgings by Goldsboro Christian Schools, Inc., filed. (Also in 81-1).
Mar. 16, 1982	Motion of North Carolina Association of Black Lawyers for leave to file a brief as amicus curiae filed.
Mar. 16, 1982	DISTRIBUTED. 3-19. (Above motions).
Mar. 23, 1982	REDISTRIBUTED. 3-26. (Above motions).
March 24, 1982	Opposition of Goldsboro Schools to motion of North Carolina Association of Black Lawyers for leave to file a brief as amicus curiae filed. (Also in 81-1)
March 30, 1982	DISTRIBUTED. 4-2. (Above motions).
Apr. 13, 1982	DISTRIBUTED. 4-16. (Above motions).
Apr. 19, 1982	(1) The motion of National Association for the Advancement of Colored People, et al. for leave to intervene as parties respondent and for leave to participate in oral argument is DENIED. (2) The alternative request to file a brief as amici curiae is GRANTED. (3) The motion of Laurence H. Tribe and Bernard Wolfman for leave to file a brief as amici curiae is GRANTED. (4) The motion of Agencies of the

(Over)

Title

No.

DATE	PROCEEDINGS AND ORDERS
	United Church of Christ for leave to file a brief as amicus curiae is GRANTED. (5) The motion of Lawyers' Committee for Civil Rights Under Law, et al. for leave to file a supplemental brief as amici curiae is GRANTED. (6) The motion of North Carolina Association of Black Lawyers for leave to file a brief as amicus curiae is GRANTED. (7) The motion of the Solicitor General for leave to file a brief on the merits out-of-time is GRANTED. (8) The motion of the Solicitor General for leave to file a motion for divided argument out-of-time is GRANTED. (9) The motion of petitioner in No. 81-3 for an order directing respondent to act with respect to respondent's memorandum filed January 8, 1982 is DENIED. (10) The motions of petitioners for summary reversal are DENIED. (11) William T. Coleman, Jr., Esquire, of Washington, D. C., a member of the Bar of this Court, is invited to brief and argue these cases, as amicus curiae, in support of the judgments below.
Aug. 20, 1982	Motion of Bob Jones University for divided argument and for additional time for oral argument filed.
Aug. 25, 1982	Brief, amicus curiae, of William T. Coleman, Jr. in support of the judgments below filed.
Aug. 25, 1982	CIRCULATED.
Aug. 24, 1982	Motion of National Association of Independent Schools for leave to file a brief as amicus curiae filed. (Vide: 81-1)
Aug. 25, 1982	Motion of Independent Sector for leave to file a brief as amicus curiae filed. (Vide: 81-1)
Aug. 24, 1982	Motion of Lawrence E. Lewy for leave to file a brief as amicus curiae filed. (Vide: 81-1)
Aug. 25, 1982	Motion of International Human Rights Law Group for leave to file a brief as amicus curiae filed. (Vide: 81-1)
Aug. 25, 1982	Response of William T. Coleman, Jr., amicus curiae filed (Vide: 81-1)
Aug. 25, 1982	Brief, amicus curiae, for the National Association for the Advancement of Colored People, et al. filed. (Vide: 81-1)
Aug. 27, 1982	Motion of Anti-Defamation League of B'nai B'rith for leave to file a brief as amicus curiae filed. (Vide: 81-1)
Aug. 25, 1982	Application of William T. Coleman, Jr., for leave to file amicus curiae brief in excess of page limitations, and order granting same by Burger, CJ., 8/27/82, not to exceed 69 pages.

NO. 81-3-CFX	TITLE Bob Jones University, Petitioner v. United States

DOCKETED	COURT
July 1, 1982	United States Court of Appeals for the Fourth Circuit

DATE	PROCEEDINGS AND ORDERS
Aug. 27, 1982	Motion of Goldsboro Christian Schools, Inc. for divided argument and for additional time for oral argument filed. (Also in 81-1).
Aug. 31, 1982	Response of the Solicitor General to motion of Bob Jones University for divided argument and for additional time for oral argument filed. (Also in 81-1).
Aug. 25, 1982	CIRCULATED.
Sept. 10, 1982	Application for leave to file reply brief on behalf of Bob Jones University in excess of page limitations, and order granting same by Burger, CJ., not to exceed 30 pages. 9/10/82.
Sept. 30, 1982	Reply brief for petitioner Bob Jones University filed. (D).
Oct. 4, 1982	The motion on National Association of Independent Schools for leave to file a brief as amicus curiae is GRANTED. The motion of Lawrence E. Lewy for leave to file a brief as amicus curiae is GRANTED. The motion of Independent Sector for leave to file a brief as amicus curiae is GRANTED. The motion of International Human Rights Law Group for leave to file a brief as amicus curiae is GRANTED. The motion of Anti-Defamation League of B'nai B'rith for leave to file a brief as amicus curiae is GRANTED. The motions for divided argument and for additional time for oral argument are GRANTED and a total of one hour and fifteen minutes is allotted for oral argument to be divided as follows: 15 minutes for Goldsboro Christian Schools, Inc.; 15 minutes for Bob Jones University; 15 minutes for the United States; and 30 minutes for William T. Coleman, Jr., Esquire, as amicus curiae.
Oct. 5, 1982	Reply brief for the United States filed. (D).(Vide: 81-1).
Oct. 12, 1982	ARGUED.
Oct. 25, 1982	Motion for leave to file post-argument brief and post-argument brief of Bob Jones University filed.
Oct. 25, 1982	DISTRIBUTED. 10-29. (Motion of petitioner for leave to file a supplemental brief after argument).